

CALIFORNIA COASTAL COMMISSION

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Hearing Date: 2/14/07
Commission Action:



W 11d

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-03-017-A1

APPLICANT: John and Ann Matise

PROJECT LOCATION: 24738 W. Saddlepeak Road, Malibu, Los Angeles County

PROJECT DESCRIPTION: Revise project plans to eliminate guest house and pool, eliminate a previously approved 704 sq. ft. three car garage and construct a 451 sq. ft. guest house with attached 204 sq. ft. garage in approximately the same location, relocate and reconfigure the previously approved driveway, reconfigure and enlarge the previously approved motor court, relocate a previously approved 704 sq. ft. garage, incorporate design changes to the previously approved residence within the same footprint, and reduce grading from approximately 3,400 cu. yds. (3,200 cu. yds. cut, 200 cu. yds. fill) to approximately 1,840 cu. yds. (1,500 cu. yds. cut, 340 cu. yds. fill). The proposed amendment also includes use of permeable material on the area of the driveway and motorcourt that is in excess of the motorcourt and driveway area previously approved under CDP No. 4-03-017.

LOCAL APPROVALS RECEIVED: County of Los Angeles Regional Planning, Approval In Concept, dated July 25, 2006; County of Los Angeles Fire Department (Access), Approval in Concept, dated February 14, 2006; County of Los Angeles Fire Department, (4th) Preliminary Fuel Modification Plan, Approval in Concept, dated June 26, 2006.

SUBSTANTIVE FILE DOCUMENTS: Update Geotechnical Engineering Report and Change of Geotechnical Consultant, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, Malibu, County of Los Angeles, California, by CalWest Geotechnical, dated February 16, 2006; Coastal Development Permit (CDP) No. 4-03-017 (Matise); CDP No. 4-01-235 (Matise).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed amendment with **three (3) revised special conditions** regarding updated landscaping and erosion control plans, structural appearance, and future development restriction.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No 4-03-017 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this Permit Amendment 4-03-017-A1. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. Special Conditions Nos. 2, 8, and 9 shown below replace those imposed in the original action. Within Appendix A, additions to the previously approved special conditions are shown in bold, and deletions are shown in strikethrough. This will result in one set of adopted special conditions.

2. Updated Landscaping and Erosion Control Plans

Prior to issuance of the Coastal Development Permit, the applicants shall submit landscaping, erosion control, and fuel modification plans prepared by a licensed landscape architect or qualified resource specialist for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting geologist to ensure that the plans are in conformance with the consultant's recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 4) The Permittees shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission -

approved amendment to the Coastal Development Permit, unless the Executive Director determines that no amendment is required.

- 5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 7) Fencing on the property shall extend no further than the area identified as zone B (irrigated zone) on the final fuel modification plan. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Fifteen (15) below.
- 8) The proposed driveway retaining wall shall be screened with a combination of native shrubs and trees of sufficient height and density to minimize views of the retaining wall from all public viewing areas.

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that should excavation or grading take place during the rainy season (November 1 – March 31), the applicants shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than thirty (30) days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles, mats, sand bag barriers, and/or silt fencing; and temporary drains, swales, and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with

native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five years from the date of the receipt of the certificate of occupancy for the residence, the applicants shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

8. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-03-017-A1. The palette samples shall be presented in a format not to exceed 8½" X 11" X ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by coastal development permit 4-03-01-A1, if such changes are specifically authorized by the Executive Director as complying with this special condition.

9. Future Development Restriction

This permit is only for the development described in coastal development permit 4-03-017-A1. Pursuant to Title 14 California Code of Regulations section 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and (b) shall not

apply to the entire property. Accordingly, any future improvements to the entire property, including but not limited to the single family residence, garages, guest house, driveway, motor court, retaining walls, landscaping, clearing of vegetation, or grading other than as provided for in the approved fuel modification/landscape and erosion control plan prepared pursuant to Special Condition Number Fourteen (14), shall require an amendment to Permit No. 4-03-017-A1 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to revise project plans approved under CDP No. 4-03-017 (Matise) to eliminate a guest house and pool (as required by Special Condition Twelve of that permit), eliminate a previously approved 704 sq. ft. three car garage and construct a 451 sq. ft. guest house with attached 204 sq. ft. garage in approximately the same location, relocate and reconfigure the previously approved driveway, reconfigure and enlarge the previously approved motor court, relocate a previously approved 704 sq. ft. garage, incorporate design changes to the previously approved residence within the same footprint, and reduce grading from approximately 3,400 cu. yds. (3,200 cu. yds. cut, 200 cu. yds. fill) to approximately 1,840 cu. yds. (1,500 cu. yds. cut, 340 cu. yds. fill). in an unincorporated area of Los Angeles County (**Exhibits 3 - 11**). The proposed amendment also includes use of permeable material on the area of the driveway and motorcourt that is in excess of the motorcourt and driveway area previously approved under CDP No. 4-03-017. A copy of the staff report for CDP No. 4-03-017, with selected exhibits, is attached as **Exhibit 1**.

The project site is located on the crest and southeastern slopes of a prominent ridgeline west of Carbon Canyon, at the end of West Saddlepeak Road (**Exhibit 2**). The project site is surrounded on three sides by undeveloped hillside. Several single family residences are located along the ridgeline to the north of the project site and on the slopes behind the ridge, northwest of the subject site. The subject property takes access from an existing 30 foot wide legal easement that crosses two neighboring properties. A portion of the proposed driveway will be located within this easement (**Exhibit 12**).

The hillside lot that slopes moderately near the crest then drops at near vertical gradients from the ridgeline to Piuma Road, a vertical distance of approximately 200 feet. The steep rocky slope contains a thin and discontinuous layer of soil supporting chaparral vegetation. Commission staff has identified the slopes on site (outside of the existing brush clearance area) as an environmentally sensitive habitat area (ESHA). The project site is visible from public viewing areas along Rambla Pacifico, Piuma Road, and the Saddle Peak Trail (which runs along Piuma Road) and is located within a scenic element identified in the Commission-certified 1986 Malibu-Santa Monica Mountains Land Use Plan (LUP).

The proposed development extends from the crest of the ridge down the southeast slope. In order to reduce fuel modification and minimize the visual prominence of the proposed project, the Commission conditioned its approval of CDP 4-03-017 to require revised plans that eliminate all structural development below elevation 2316, including the proposed guest house,

swimming pools, stairs, patio, and retaining walls. Plans for the proposed amendment, which eliminate the previously proposed lower level guest house, swimming pool, and associated stairs, walls, and patio area, are consistent with this requirement.

The proposed amendment will not increase fuel modification beyond what was previously approved, and thus will not increase impacts on ESHA. In addition, the proposed amendment will not increase the amount of impermeable surface on the site, and attendant water quality impacts, as the applicants propose to use permeable surfacing on the area of the driveway and motorcourt that is in excess of the motorcourt and driveway area previously approved under CDP No. 4-03-017.

As noted above, the subject property takes access from an existing 30 foot wide legal easement that crosses two neighboring properties. A portion of the proposed driveway will be located within this easement. Under CDP No. 4-03-017, the applicants proposed locating the driveway for the residence further upslope from the existing easement, within an area for which the applicants claimed prescriptive rights. In its approval of CDP No. 4-03-017, the Commission took no position regarding such rights, but required, under Special Condition Ten (10), that the applicants provide a copy of a recorded easement or final judicial decision documenting their legal right to construct the driveway in the proposed location. Special Condition Ten (10) further stipulated that if the applicants were unable to acquire the legal right to construct the driveway as proposed, they could apply for an amendment to the permit in order to construct the driveway within their existing legal easement. The applicants failed to acquire such legal right, and thus are proposing to relocate the driveway to within the legal easement.

B. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which the proposed development is visible, such as beaches, parks, trails, and scenic highways. The Commission also examines the building site and the size of the proposed structure(s), and the compatibility of the proposed project with surrounding development.

In addition, the Malibu-Santa Monica Mountains LUP, which is used as guidance in Commission review of development, provides the following policies for new development in highly scenic areas and along scenic roadways:

(P130) New development shall:

- be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.
- minimize the alteration of natural landforms
- be designed so as not to significantly intrude into the skyline as seen from public viewing places

(P131) Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.

The Malibu-Santa Monica Mountains LUP also provides the following guidelines for siting of structures in visual resource areas:

(P134) Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

(P135) Clustering of development in suitable areas shall be encouraged as a means to facilitate greater view protection

The project site is located in a rural area characterized by expansive, naturally vegetated mountains and hillsides. In its immediate vicinity, the project site is surrounded on three sides by undeveloped hillside, and by single family residences located along the ridgeline to the north of the project site and behind the ridgeline to the northwest of the subject site. The proposed development extends from the crest of the ridge down the southeast slope. The project site is visible from public viewing areas along Rambla Pacifico, Piuma Road, and the Saddle Peak Trail (which runs along Piuma Road) and is located within a scenic element identified in the Commission-certified 1986 Malibu-Santa Monica Mountains Land Use Plan (LUP).

As noted above, in order to minimize the visual prominence of the proposed project, the Commission conditioned its approval of CDP 4-03-017 to require revised plans that eliminate all structural development below elevation 2316, including the proposed guest house, swimming pools, stairs, patio, and retaining walls. Plans for the proposed amendment, which eliminate the previously proposed lower level guest house, swimming pool, and associated stairs, walls, and patio area, are consistent with this requirement.

The proposed amendment also includes relocation of the proposed driveway from the crest of the ridge to an alignment approximately 30 feet lower on the southeast facing slope. Construction of the driveway in this location will increase the visual impacts of the project, as it will require construction of a retaining wall ranging from 0 to 8 feet in height, which will be visible from public viewing areas along Piuma Road and Rambla Pacifica. However, the applicants were unable to obtain a legal right to an easement in the ridgetop location proposed under CDP No. 4-03-017. Thus, in order to access their property, the applicants must construct the driveway in the location proposed under this amendment.

Although no alternative locations exist for the proposed driveway, measures exist that can reduce its visual impacts. The Commission notes that the visual obtrusiveness of a project can be reduced by the implementation of a landscape plan that employs a native plant palette and vertical elements. The applicants propose to screen the proposed driveway retaining wall with landscaping. In order to ensure that the applicants' proposal is implemented in a manner that

minimizes visual impacts, **Special Condition Two (2)**, as revised by this amendment, requires the applicants to submit updated landscape and erosion control plans that include screening of the proposed retaining wall with a combination of native shrubs and trees of sufficient height and density to minimize views of the wall from all public viewing areas.

Design restrictions can also reduce the visual impacts of the proposed project. The use of non-glare glass and colors compatible with the natural background will help to ensure that the proposed project blends with its surroundings to the maximum extent feasible. Therefore, **Special Condition Eight (8)**, as revised by this amendment to apply to all structures approved herein, restricts the use of colors to a natural background palette and requires the use of non-glare glass on site.

In order to further ensure that future development of the site is reviewed for potentially adverse effects on coastal visual resources, the Commission finds it necessary to impose **Special Condition Nine (9)**, as revised by this amendment, which requires the applicants to obtain a coastal development permit for any future development of the site, including improvements that might otherwise be exempt from coastal permit requirements. As provided in Special Condition Eleven (11) of the original approval, the applicant is required to record a deed restriction that imposes the terms and conditions of this permit, as amended, as restrictions on the use and enjoyment of the property, and that provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For all of the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

C. Cumulative Impacts

Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new developments. Section 30250 (a) of the Coastal Act states:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development

with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Pursuant to Coastal Act Sections 30250 and 30252 cited above, new development raises issues relative to cumulative impacts on coastal resources. The construction of a second unit on a site where a primary residence exists intensifies the use of the subject parcel. The intensified use creates additional demands on public services, such as water, sewage, electricity, and roads. Thus, second units pose potential cumulative impacts in addition to the impacts otherwise caused by the primary residential development.

Based on the requirements of Coastal Act Section 30250 and 30252, the Commission has limited the development of second units on residential parcels in the Malibu and Santa Monica Mountain areas to a maximum of 750 sq. ft. In addition, the issue of second units on lots with primary residences has been the subject of past Commission action in certifying the Malibu Land Use Plan (LUP). In its review and action on the Malibu LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft.) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that the small size of units (750 sq. ft.) and the fact that they are intended only for occasional use by guests, such units would have less impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints such as water, sewage, and electricity) than an ordinary single family residence or residential second units. Finally, the Commission has found in past permit decisions that a limit of 750 sq. ft. encourages the units to be used for their intended purpose –as a guest unit- rather than as second residential units with the attendant intensified demands on coastal resources and community infrastructure.

The second unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different forms which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, or farm labor unit; and 2) a guesthouse, with or without separate kitchen facilities. Past Commission action has consistently found that both second units and guesthouses inherently have the potential to cumulatively impact coastal resources. Thus, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act in this area (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29).

The applicant proposes to construct a detached 451 sq. ft. guest house with attached 204 sq. ft. garage. The applicant is not proposing to construct a second residential unit, but is proposing to construct a significant detached structure that could potentially be converted for residential use in the future. The Commission finds that the proposed 655 sq. ft. guest house/garage meets the 750 sq. ft. limitations for maximum habitable square footage for second units which may be considered a secondary dwelling.

The Commission has many past precedents on similar project proposals that have established a 750 sq. ft. maximum of habitable square footage for development of detached units that may be considered a secondary dwelling. The Commission notes that the applicant is not proposing to utilize the guest house/garage as a secondary dwelling, therefore the structure may be reviewed as an accessory building to the proposed single family residence. However, the Commission finds it necessary to ensure that no additions or improvements are made to the detached

structure in the future that may enlarge or further intensify the use of this structure without due consideration of the cumulative impacts that may result. Therefore, the Commission imposes **Special Condition Nine (9)**, as revised by this amendment, the Future Development Restriction, which will require the applicant to obtain an amended or new coastal permit if additions or improvements to the detached structure are proposed in the future. As provided in Special Condition Eleven (11) of the original approval, the applicant is required to record a deed restriction that imposes the terms and conditions of this permit, as amended, including the Future Development Restriction, as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

As conditioned to minimize the potential for cumulative impacts resulting from the proposed development, the Commission finds that the proposed project is consistent with Section 30250 and 30252 of the Coastal Act.

D. Local Coastal Program

Section 30604(a) of the Coastal Act states:

Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicants. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

TO STAFF REPORT FOR CDP AMENDMENT NO. 4-03-017-A1

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Plans Conforming to Geologic Recommendations**

All recommendations contained in the reports prepared by Mountain Geology, Inc. and West Coast Geotechnical (Update Geotechnical Engineering Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated June 5, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated June 2, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated September 17, 2001; and Update Geotechnical Engineering Report, Proposed

Residential Development, 24738 W. Saddle Peak Road, A.P.N. 4453-002-045, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated October 1, 2001) shall be incorporated into all final design and construction including foundations, grading, setbacks, compaction, settlement, lateral design, site preparation, temporary excavations, slabs on grade, retaining walls, backfilling, expansive soils, site observation, plan review, sewage disposal, swimming pool, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to the issuance of the Coastal Development Permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require an amendment to the permit or a new Coastal Development Permit.

2. Updated Landscaping and Erosion Control Plans

Prior to issuance of the Coastal Development Permit, the applicants shall submit landscaping, erosion control, and fuel modification plans prepared by a licensed landscape architect or qualified resource specialist for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting geologist to ensure that the plans are in conformance with the consultant's recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

- 1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within sixty (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native, drought resistant plants, compatible with the surrounding habitat, as listed by the California Native Plant Society, Santa Monica Mountains Chapter in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. **All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.** ~~Invasive, non-indigenous plant species that tend to supplant native species shall not be used.~~
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. **All native plant species shall be of local genetic stock.** Such planting shall be adequate to provide ninety (90) percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.

- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 4) The Permittees shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the Coastal Development Permit, unless the Executive Director determines that no amendment is required.
- 5) ~~Vegetation removal shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes, and location of plant materials to be removed, and how often thinning is to occur. The final fuel modification plan shall minimize the removal of native vegetation while providing for fire safety. Irrigated lawn, turf, and ground cover planted within Zone A shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains. Prior to issuance of the Coastal Development Permit, the applicants shall submit evidence that the final fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County.~~ **within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.**
- 6) **Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.**
- 7) Fencing on the property shall extend no further than the area identified as zone B (irrigated zone) on the final fuel modification plan. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Eight (8) below.
- 8) **The proposed driveway retaining wall shall be screened with a combination of native shrubs and trees of sufficient height and density to minimize views of the retaining wall from all public viewing areas.**

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

- 2) The plan shall specify that should excavation or grading take place during the rainy season (November 1 – March 31), the applicants shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than thirty (30) days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles, mats, sand bag barriers, and/or silt fencing; and temporary drains, swales, and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five years from the date of the receipt of the certificate of occupancy for the residence, the applicants shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Drainage and Polluted Runoff Control Plan

Prior to issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with engineering geologist's recommendations. In addition to the above specifications, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, one (1) hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned, and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage, filtration structures, or other BMPs fail or result in increased erosion, the applicants, landowner, or successor-in-interest shall be responsible for any necessary repairs to the drainage, filtration system, and BMPs and restoration of any eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new Coastal Development Permit is required to authorize such work.

4. Wildfire Waiver of Liability

Prior to the issuance of a coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

5. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit. Removal of natural vegetation for the purpose of landslide repair shall not occur until commencement of that project.

6. Removal of Excess Graded Material

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

7. Lighting Restrictions

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-03-017-A1. The palette samples shall be presented in a format not to exceed 8½" X 11" X ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by coastal development permit 4-03-017-A1, if such changes are specifically authorized by the Executive Director as complying with this special condition.

9. Future Development Restriction

This permit is only for the development described in coastal development permit 4-03-017-A1. Pursuant to Title 14 California Code of Regulations section 13250(b)(6) **and 13253(b)(6)**, the exemptions otherwise provided in Public Resources Code section 30610(a) **and (b)** shall not apply to the ~~development governed by coastal development permit 4-03-017~~ **entire property**. Accordingly, any future improvements to the ~~single family residence authorized by this permit,~~ **entire property, including but not limited to the single family residence, garages, guest house, driveway, motor court, retaining walls, landscaping, clearing of vegetation, or grading other than as provided for in the approved fuel modification/landscape and**

erosion control plan prepared pursuant to Special Condition Number Fourteen (14), shall require an amendment to Permit 4-03-017-A1 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. Evidence of Legal Right to Construct Driveway

Prior to issuance of Permit No. 4-03-017, the applicant shall provide the Executive Director with a copy of a recorded easement or final judicial decision documenting that the owner of the site has the legal right to construct the proposed driveway across Assessor's Parcel No. 4453-002-037, in the location shown on **Exhibit 4**. Should the applicant fail to obtain a legal right to construct the driveway in the location authorized by this permit, construction of the driveway in an alternative location shall require an amendment to the permit or a new Coastal Development Permit.

11. Deed Restriction

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

12. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised project plans that eliminate all proposed development located below elevation 2316, as shown on the proposed grading plan, including the proposed guest house, swimming pool, patio, stairs, and associated retaining walls.

13. Habitat Impact Mitigation

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat that are "environmentally sensitive habitat area" (ESHA), that will be disturbed by the proposed development, including by fuel modification and brush clearance requirements on the project

site and adjacent property. The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries if the fuel modification/brush clearance zones extend onto adjacent property. The delineation map shall indicate the total acreage for all chaparral ESHA both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification requirements by one of the three following habitat mitigation methods:

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) *Performance Bond*

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to issuance of the coastal development permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Santa Monica Mountains Conservancy to mitigate adverse impacts to chaparral habitat. The fee shall be based on the cost per acre to restore or create comparable habitat type, and the acreage of habitat affected. The fee shall be used for the acquisition or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Filed: 2/28/03
49th Day: 4/18/03
180th Day: 8/27/03
Staff: LKF-V
Staff Report: 7/23/03
Hearing Date: 8/06/03
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-03-017

APPLICANT: John and Ann Matise

AGENT: Schmitz & Associates

PROJECT LOCATION: 24738 W. Saddlepeak Road, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a two story, 29.5 foot high, 5,379 sq. ft. single family residence, with two detached 704 sq. ft. garages, driveway, turnaround, 750 sq. ft. guest house, swimming pool, patio, stairs, retaining walls, septic system, and approximately 3,400 cu. yds. of grading (3,200 cu. yds. cut, 200 cu. yds. fill).

Lot area:	6.92 acres
Building coverage:	5,438 sq. ft.
Pavement coverage:	2,360 sq. ft.
Unimproved area:	286,966 sq. ft.
Maximum height:	29.5 ft.

LOCAL APPROVALS RECEIVED: County of Los Angeles Regional Planning, Approval In Concept, dated December 17, 2001; County of Los Angeles Geology and Geotechnical Engineering Review Sheet, Approval In-Concept dated November 27, 2000; County of Los Angeles Environmental Health, Conceptual Approval, dated September 28, 2001; County of Los Angeles Fire Department (Access), Approval in Concept, dated August 6, 2001; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan, Approval in Concept, dated September 20, 2001.

SUBSTANTIVE FILE DOCUMENTS: Update Geotechnical Engineering Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated June 5, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated June 2, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated September 17, 2001; Update Geotechnical Engineering Report, Proposed Residential Development, 24738 W. Saddle Peak Road, A.P.N. 4453-002-045, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated October 1, 2001.

Exhibit 1
CDP No. 4-03-017-A1
Staff Report, CDP No. 4-03-017

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with **thirteen (13) special conditions** regarding conformance with geologic recommendations, landscaping and erosion control plans, drainage and polluted runoff control plan, wildfire waiver of liability, removal of natural vegetation, removal of excess graded material, lighting restrictions, structural appearance, future development restriction, evidence of legal right to construct driveway, deed restriction, revised plans, and habitat impact mitigation .

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-03-017 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Plans Conforming to Geologic Recommendations

All recommendations contained in the reports prepared by Mountain Geology, Inc. and West Coast Geotechnical (Update Geotechnical Engineering Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated June 5, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated June 2, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated September 17, 2001; and Update Geotechnical Engineering Report, Proposed Residential Development, 24738 W. Saddle Peak Road, A.P.N. 4453-002-045, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated October 1, 2001) shall be incorporated into all final design and construction including foundations, grading, setbacks, compaction, settlement, lateral design, site preparation, temporary excavations, slabs on grade, retaining walls, backfilling, expansive soils, site observation, plan review, sewage disposal, swimming pool, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to the issuance of the Coastal Development Permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require an amendment to the permit or a new Coastal Development Permit.

2. Landscaping and Erosion Control Plans

Prior to issuance of the Coastal Development Permit, the applicants shall submit landscaping, erosion control, and fuel modification plans prepared by a licensed landscape architect or qualified resource specialist for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting geologist to ensure

that the plans are in conformance with the consultant's recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

- 1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within sixty (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native, drought resistant plants, compatible with the surrounding habitat, as listed by the California Native Plant Society, Santa Monica Mountains Chapter in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Invasive, non-indigenous plant species that tend to supplant native species shall not be used.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide ninety (90) percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 4) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 5) The Permittees shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the Coastal Development Permit, unless the Executive Director determines that no amendment is required.
- 6) Vegetation removal shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes, and location of plant materials to be removed, and how often thinning is to occur. The final fuel modification plan shall minimize the removal of native vegetation while providing for fire safety. Irrigated lawn, turf, and ground cover planted within Zone A shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains. Prior to issuance of the Coastal Development Permit, the applicants shall submit evidence that the final fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County.
- 7) Fencing on the property shall extend no further than the area identified as zone B (irrigated zone) on the final fuel modification plan. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Eight (8) below.

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that should excavation or grading take place during the rainy season (November 1 – March 31), the applicants shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than thirty (30) days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles, mats, sand bag barriers, and/or silt fencing; and temporary drains, swales, and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five years from the date of the receipt of the certificate of occupancy for the residence, the applicants shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Drainage and Polluted Runoff Control Plan

Prior to issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall

incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with engineering geologist's recommendations. In addition to the above specifications, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, one (1) hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned, and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage, filtration structures, or other BMPs fail or result in increased erosion, the applicants, landowner, or successor-in-interest shall be responsible for any necessary repairs to the drainage, filtration system, and BMPs and restoration of any eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new Coastal Development Permit is required to authorize such work.

4. Wildfire Waiver of Liability

Prior to the issuance of a coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

5. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit. Removal of natural vegetation for the purpose of landslide repair shall not occur until commencement of that project.

6. Removal of Excess Graded Material

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

7. Lighting Restrictions

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-03-017.

The palette samples shall be presented in a format not to exceed 8½" X 11" X ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by coastal development permit 4-03-017 if such changes are specifically authorized by the Executive Director as complying with this special condition.

9. Future Development Restriction

This permit is only for the development described in coastal development permit 4-03-017. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit 4-03-017. Accordingly, any future improvements to the single family residence authorized by this permit, shall require an amendment to Permit 4-03-017 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. Evidence of Legal Right to Construct Driveway

Prior to issuance of Permit No. 4-03-017, the applicant shall provide the Executive Director with a copy of a recorded easement or final judicial decision documenting that the owner of the site has the legal right to construct the proposed driveway across Assessor's Parcel No. 4453-002-037, in the location shown on **Exhibit 4**. Should the applicant fail to obtain a legal right to construct the driveway in the location authorized by this permit, construction of the driveway in an alternative location shall require an amendment to the permit or a new Coastal Development Permit.

11. Deed Restriction

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

12. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised project plans that eliminate all proposed development located below elevation 2316, as shown on the proposed grading plan, including the proposed guest house, swimming pool, patio, stairs, and associated retaining walls.

13. Habitat Impact Mitigation

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat that are "environmentally sensitive habitat area" (ESHA), that will be disturbed by the proposed development, including by fuel modification and brush clearance requirements on the project site and adjacent property. The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries if the fuel modification/brush clearance zones extend onto adjacent property. The delineation map shall indicate the total acreage for all chaparral ESHA both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification requirements by one of the three following habitat mitigation methods:

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards

are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to issuance of the coastal development permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Santa Monica Mountains Conservancy to mitigate adverse impacts to chaparral habitat. The fee shall be based on the cost per acre to restore or create comparable habitat type, and the acreage of habitat affected. The fee shall be used for the acquisition or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to construct a two story, 29.5 foot high, 5,379 sq. ft. single family residence, with two detached 704 sq. ft. garages, driveway, turnaround, 750 sq. ft. guest house, swimming pool, patio, stairs, retaining walls, septic system, and approximately 3,400 cu. yds. of grading (3,200 cu. yds. cut, 200 cu. yds. fill) in an unincorporated area of Los Angeles County (**Exhibits 3 - 14**).

The project site is located on the crest and southeastern slopes of a prominent ridgeline west of Carbon Canyon, at the end of West Saddlepeak Road (**Exhibits 1 and 18**). The project site is surrounded on three sides by undeveloped hillside. Several single family residences are located along the ridgeline to the north of the project site and on the slopes behind the ridge, northwest of the subject site (**Exhibits 16 - 18**).

The hillside lot slopes moderately near the crest then drops at near vertical gradients from the ridgeline to Piuma Road, a vertical distance of approximately 200 feet. The steep rocky slope contains a thin and discontinuous layer of soil supporting chaparral vegetation. Commission staff has identified the slopes on site (outside of the existing brush clearance area) as an environmentally sensitive habitat area (ESHA). The project site is visible from public viewing areas along Rambla Pacifico, Piuma Road, and the Saddle Peak Trail (which runs along Piuma Road) and is located within a scenic element identified in the Commission-certified 1986 Malibu-Santa Monica Mountains Land Use Plan (LUP). (**Exhibits 2 and 18**).

The proposed development extends from the crest of the ridge down the southeast slope. The proposed main residence will be constructed on a level grade achieved by cutting into the slope below the crest and placing a narrow wedge of fill, up to six feet in height, on the lower portion of the slope. Similarly, the lower level of proposed development, including the proposed swimming pool and guest house, will be cut into the slope and supported by an additional

wedge of fill, up to eight feet in height. The applicants propose to support the areas of fill with retaining walls of up to 8 feet high (**Exhibits 5, 6, and 12**).

Proposed structural development extends from elevation 2351.5 (top of the roof), approximately 15 feet above the ridgeline, to elevation 2304 (bottom of retaining wall surrounding pool). The proposed development consists of a driveway, two 704 sq. ft. three-car garages and a 100-foot wide turnaround at the crest, a two-story 29.5 ft. high main residence just below the crest, and a guest house and swimming pool area below the main residence. The southeast face of the proposed development is approximately 48 feet high (**Exhibit 10**). Fuel modification, as currently proposed, will extend up to 90 vertical feet further down the slope. While existing brush clearance radii to the north overlap with the brush clearance radius established by the proposed project, the new brush clearance radius will extend onto the vacant parcel immediately west of the subject site, resulting in additional clearance on steep slopes containing chaparral vegetation (**Exhibits 14 - 15**).

An earlier version of the proposed development was the subject of a previous coastal permit application [CDP Application No. 4-01-235 (Matise)]. Staff reviewed the application and recommended denial of the proposed project as inconsistent with the requirements of Coastal Act Sections 30231, 30240, 30251, and 30253 for the minimization of erosion and landform alteration and the protection of ESHA and visual resources. The applicants subsequently submitted, on October 3, 2002, a revised proposal that eliminated the gazebo, reduced the height of the lower retaining wall (and therefore the development façade) by three feet, reduced the distance between the main residence and the pool by eight feet, and reduced the amount of grading to 2,860 cu. yds. (1,740 cu. yds. cut, 1,020 cu. yds. fill). The staff recommendation did not change upon review of the revised plans, because the revision failed to implement numerous modifications or to substantially reduce the scale of the development to minimize impacts to coastal resources. The applicants withdrew the application, without prejudice, at the October 8, 2002 Commission hearing on the proposal.

The current proposal, submitted on January 29, 2003, reduces the height of the proposed structural development envelope by up to nine feet, by cutting the main residence and the swimming pool area further into the slope, thus reducing the height of the fill slopes and retaining walls supporting the structures. In addition, the revised fuel modification plan contains a note that allows for reduction of Zone C, the thinning zone, based on geologic features (such as the sandstone outcrops that occur on the site) and on the nature and density of fuels. However, the design and square footage of the structures, and the overall footprint of development has not been reduced. In addition, the amount of grading currently proposed is 540 cu. yds. greater than the 2,860 cu. yds. included in the October 3, 2002 revision. The applicant has submitted comparative elevations and sections (attached as **Exhibits 10 - 13**) comparing this application with the proposal they originally submitted with CDP Application No. 4-01-235.

Staff met with the applicants on January 22, 2002, and on May 15, 2003 at the project site. At these meetings, staff raised concerns about the visual impacts of the project and the extent of fuel modification that would be required for the proposed development. Staff suggested that while the modifications to the project were positive, additional modifications, as outlined in the staff report for CDP Application No. 4-01-235, were available to reduce the visual impacts of the project.

The proposed project includes construction of a driveway extending from the end of West Saddle Peak Road to the proposed turnaround for the residence. The driveway as proposed

crosses a neighboring property, for a distance of approximately 60 feet, without benefit of a legal easement. The owners of the neighboring property, Bala and Mae Chandran, oppose construction of the driveway as proposed, noting that the proposed location is in close proximity (within 5 to 10 feet) to their residence. The Chandrans suggest that the applicants construct the driveway within their existing legal easement, which is located approximately 30 feet east and downslope from the proposed driveway location and which is much steeper. The applicants claim that they have a prescriptive right to use the proposed driveway route. The Commission cannot resolve, and does not take any position regarding, the respective claims of the property owners. Further findings on the matter are included in Section C (Visual Resources).

B. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which the proposed development is visible, such as beaches, parks, trails, and scenic highways. The Commission also examines the building site and the size of the proposed structure(s), and the compatibility of the proposed project with surrounding development.

In addition, the Malibu-Santa Monica Mountains LUP, which is used as guidance in Commission review of development, provides the following policies for new development in highly scenic areas and along scenic roadways:

(P130) New development shall:

- be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.
- minimize the alteration of natural landforms
- be designed so as not to significantly intrude into the skyline as seen from public viewing places

(P131) Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.

The Malibu-Santa Monica Mountains LUP also provides the following guidelines for siting of structures in visual resource areas:

- (P134) Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.
- (P135) Clustering of development in suitable areas shall be encouraged as a means to facilitate greater view protection

As noted above, the project site is located in a rural area characterized by expansive, naturally vegetated mountains and hillsides. In its immediate vicinity, the project site is surrounded on three sides by undeveloped hillside, and by single family residences located along the ridgeline to the north of the project site and behind the ridgeline to the northwest of the subject site.

The proposed development extends from the crest of the ridge down the southeast slope. Proposed structural development extends from elevation 2351.5 (top of the roof), approximately 15 feet above the ridgeline, to elevation 2304 (bottom of retaining wall surrounding pool). Fuel modification extends 120 to 200 feet further down slope. The proposed development consists of a driveway, two 704 sq. ft. three-car garages and a 100-foot wide turnaround at the crest, a two-story 29.5 ft. high main residence just below the crest, and a guest house and swimming pool area below the main residence. The southeast face of the proposed development is approximately 48 feet high. Fuel modification, as currently proposed, will extend up to 90 vertical feet further down the slope.

The proposed project includes 3,400 cu. yds. of grading (3,200 cu. yds. cut, 200 cu. yds. fill) to construct three level pad areas. The topmost pad involves a small amount of cut on the crest of the ridge for construction of the driveway and two detached garages. Below the driveway, the main residence will be constructed on a level grade achieved by cutting into the slope below the crest and placing a narrow wedge of fill, up to six feet in height, on the lower portion of the slope. Similarly, the lower level of proposed development, including the proposed swimming pool and guest house, will be cut into the slope and supported by an additional wedge of fill, up to eight feet in height. The applicants propose to support the areas of fill with retaining walls ranging from 0 to 8 feet high.

As proposed, the finished floor level of the main residence is at 2,322 ft. above sea level, approximately 15 feet below the crest of the ridge. The main residence, measuring 29.5 feet above finished grade, would extend approximately 15 feet above the crest of the ridge behind it. The remainder of the development, consisting of a maximum six foot high retaining wall for the main residence and the guesthouse/pool level supported by a maximum eight foot high retaining wall topped with a four foot high patio wall would extend approximately 18 vertical feet below the floor level of the main residence, thus creating an approximately 48 foot high development face as viewed from the southeast (**Exhibit 10**). The width of the development envelope is approximately 150 feet.

In summary, the proposed development results in the addition of a substantial development façade extending from approximately 33 feet below the ridgeline to 15 feet above it. The proposed project design results in a southeast elevation that is the equivalent massing and height of a three story structure with a development face of 48 feet in height (measured from the top of the roof to the bottom of the lower retaining wall below the guesthouse and pool area. The large southeastern face of the development will adversely impact views of this ridgeline as seen from scenic viewpoints along Rambla Pacifico, Piuma Road, and the Saddle Peak Trail. In

addition, the proposed development is not visually compatible with the surrounding residences that are a maximum two stories in height.

According to assessment data¹ for the area, the square footages of the two residences immediately north of the project site (24736 West Saddle Peak Road and 24740 West Saddle Peak Road) are 2,446 sq. ft. and 2,742 sq. ft. respectively. Other houses visible on the ridgeline include 24730 West Saddle Peak Road and 24734 West Saddle Peak Road. The largest of these, 24734 West Saddle Peak Road, was determined to be an exempt fire rebuild in 2000 [CDP Exemption Determination No. 4-00-012-X (Platler)]. This residence includes a 4,371 sq. ft. main residence and 806 sq. ft. attached garage, resulting in a total square footage of 5,177 sq. ft. The height of the residence, and of the façade visible from Rambla Pacifico, Piuma Road, and the Saddle Peak Trail, is 33 feet. Thus the façade of development is comparable to that of the 5,379 sq. ft. main residence (minus garages, guesthouse, and pool area) proposed by the applicants. The residence at 24730 West Saddle Peak Road, just north of the Platler residence, is 2,690 sq. ft. in size.

Thus the proposed residence, with a square footage of 7,537 sq. ft. (including garages and guesthouse) would be the largest on the ridge, and over twice the size of three of the four adjacent residences. Furthermore, the proposed 48 foot high development façade would be significantly greater than those of adjacent residences on the ridgeline, resulting in a development that is even more prominent than the already existing homes on the ridgeline, and that poses even greater impacts to views from public viewing areas along Rambla Pacifico, Piuma Road, and the Saddle Peak Trail (which runs along Piuma Road).

As noted above, the proposed project includes the construction of an approximately 2200 sq. ft. patio area with a swimming pool, nine to twelve foot high retaining wall/decorative wall, and a 750 sq. ft. guest house in front of and below the proposed main residence. This lower level of development extends structural development on the site downslope by approximately 12 vertical feet, or approximately 25% of the entire development façade. Furthermore, construction of these amenities is not necessary in order to allow for residential development to occur on the subject site. Therefore, in order to reduce the visual prominence of the proposed project, **Special Condition Twelve (12)** requires the applicants to submit revised plans that eliminate all structural development below elevation 2316, including the proposed guest house, swimming pools, stairs, patio, and retaining walls. Elimination of this lower level of development will result in a less visually intrusive development façade that is more consistent with those of adjacent residences.

Design restrictions can also reduce the visual impacts of the proposed project. The use of non-glare glass and colors compatible with the natural background, as well as the minimal use of outdoor night lighting, will help to ensure that the proposed project blends with its surroundings to the maximum extent feasible. Therefore, **Special Condition Eight (8)** restricts the use of colors to a natural background palette and requires the use of non-glare glass on site. Furthermore, **Special Condition Seven (7)** restricts the use of outdoor night lighting to the minimum necessary for safety purposes.

The Commission notes that visual impacts can be further minimized by the implementation of a landscape plan that employs a native plant palette and vertical elements. The Commission also notes that visual impacts will be further mitigated by the implementation of erosion control

¹ Win2Data database, Los Angeles County, California, First American Real Estate Solutions (FARES), July 2003.

measures, as in **Special Conditions Two (2), Three (3), Five (5), and Six (6)**. Implementation of the requirements of these conditions will ensure that the adverse visual effects of obtrusive non-native landscaping, denuded slopes, and uncontrolled erosion are avoided.

In order to ensure that future development of the site is reviewed for potentially adverse effects on coastal visual resources, the Commission finds it necessary to impose **Special Condition Nine (9)**, which requires the applicants to obtain a coastal development permit for any future development of the site, including improvements that might otherwise be exempt from coastal permit requirements. In addition, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Lastly, the proposed project includes construction of a driveway extending from the end of West Saddle Peak Road to the proposed turnaround for the residence. The driveway as proposed crosses a neighboring property, for a distance of approximately 60 feet, without benefit of a legal easement. The owners of the neighboring property, Bala and Mae Chandran, oppose construction of the driveway as proposed, noting that the proposed location is in close proximity (within 5 to 10 feet) to their residence. The Chandrans suggest that the applicants construct the driveway within their existing legal easement, which is located approximately 30 feet east and downslope from the proposed driveway location. The applicants claim that they have a prescriptive right to use the proposed driveway route. The Commission cannot resolve, and does not take any position regarding, the respective claims of the property owners.

The proposed driveway is located on the crest of the ridge, on a gentler grade than found in the existing legal easement. Construction of the driveway within the legal easement would entail additional grading, and the construction of a large fill slope and/or large, highly visible retaining wall(s) to support its downslope side. Construction of the driveway in the existing legal easement would therefore increase the visual impacts of the project. Although construction of the driveway in the proposed location would reduce impacts to coastal resources, the Commission cannot permit development on the Chandrans' property without their permission. Therefore, **Special Condition Ten (10)** requires the applicants to provide a copy of a recorded easement or final judicial decision documenting their legal right to construct the driveway in the proposed location. If the applicants are unable to acquire the legal right to construct the driveway as proposed, they can apply for an amendment to this permit in order to construct the driveway within their existing legal easement. The Chandrans also assert that the legal easement only allows construction of a 15 foot wide driveway. The applicants propose a 20 foot wide driveway, to comply with current fire safety standards. Similarly, if the applicants are not able to obtain the right to construct the driveway to the proposed width, they will have to apply for an amendment to reduce the driveway width.

For all of the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

C. Hazards and Geologic Stability

Section 30253 of the Coastal Act states, in pertinent part, that new development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***

- (2) ***Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

The applicant has submitted several geologic reports prepared by Mountain Geology, Inc. and West Coast Geotechnical (Update Geotechnical Engineering Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated June 5, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated June 2, 2003; Engineering Geologic Update Letter, Proposed Residential Development, A.P.N. 4453-002-045, 24738 W. Saddle Peak Road, County of Los Angeles, California, by Mountain Geology, Inc., dated September 17, 2001; and Update Geotechnical Engineering Report, Proposed Residential Development, 24738 W. Saddle Peak Road, A.P.N. 4453-002-045, Malibu, County of Los Angeles, California, by West Coast Geotechnical, dated October 1, 2001.) The reports make numerous recommendations regarding foundations, grading, setbacks, retaining walls, settlement, sewage disposal, excavations, and drainage.

The West Coast Geotechnical report dated June 5, 2003 concludes:

It is the opinion of West Coast Geotechnical that the proposed development will be safe against hazard from landslide, settlement or slippage, and that the proposed development will not have an adverse affect on the stability of the subject site or immediate vicinity, provided our recommendations are made part of the development plans and are implemented during construction.

Therefore, based on the recommendations of the applicant's geologic consultants, the proposed development is consistent with the requirements of Section 30253 of the Coastal Act, so long as the geologic consultant's recommendations are incorporated into the final project plans and designs. Therefore, it is necessary to require the applicant to submit final project plans that have been certified in writing by the geologic consultant as conforming to all recommendations of the consultant, in accordance with **Special Condition One (1)**.

The Commission finds that, as conditioned by **Special Condition One (1)**, the proposed project is consistent with the geologic stability requirements of Coastal Act Section 30253.

Erosion

Section 30253 of the Coastal Act requires that new development neither create nor contribute significantly to erosion. The site of the proposed project contains slopes that descend, at gradients up to 1:1, approximately 200 vertical feet from the crest of a ridge to Piuma Road, approximately 1000 feet west of Carbon Creek. The slopes consist of sandstone bedrock covered with a thin, discontinuous layer of soil and native chaparral vegetation. The September 26, 2000 report by Mountain Geology Inc. notes that the slopes on the site are subject to downhill creep and erosion. Incorporating adequate erosion control, drainage provisions and appropriate landscaping into the proposed development will serve to minimize erosion at the site.

As noted above, the applicant's proposal includes construction of a new single-family residence, two detached garages, guest house, swimming pool, stairs, patio, retaining walls, driveway, turnaround, and septic system. The site is considered a "hillside" development, as it involves steeply to moderately sloping terrain with soils that are susceptible to erosion.

In total, the project will result in additional impervious surface area on the site, increasing both the volume and velocity of storm water runoff. Unless surface water is controlled and conveyed off of the site in a non-erosive manner, this runoff will result in increased erosion on and off the site.

Uncontrolled erosion leads to sediment pollution of downgradient water bodies. Surface soil erosion has been established by the United States Department of Agriculture, Natural Resources Conservation Service, as a principal cause of downstream sedimentation known to adversely affect riparian and marine habitats. Suspended sediments have been shown to absorb nutrients and metals, in addition to other contaminants, and transport them from their source throughout a watershed and ultimately into the Pacific Ocean. The construction of single family residences in sensitive watershed areas has been established as a primary cause of erosion and resultant sediment pollution in coastal streams.

In order to ensure that erosion and sedimentation from site runoff are minimized, the Commission requires the applicant to submit a drainage plan, as defined by **Special Condition Three (3)**. **Special Condition Three (3)** requires the implementation and maintenance of a drainage plan designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. Fully implemented, the drainage plan will reduce or eliminate the resultant adverse impacts to the water quality and biota of coastal streams. This drainage plan is fundamental to reducing on-site erosion and the potential impacts to coastal streams. Additionally, the applicant must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

In addition, the Commission finds that temporary erosion control measures implemented during construction and excavation on the slope will also minimize erosion and enhance site stability. **Special Condition Two (2)** therefore requires the applicant to implement interim erosion control measures should grading take place during the rainy season. Such measures include stabilizing any stockpiled fill with geofabric covers or other erosion-controlling materials, installing geotextiles or mats on all cut and fill slopes, and closing and stabilizing open trenches to minimize potential erosion from wind and runoff water.

The Commission also finds that landscaping of disturbed areas on the subject site will reduce erosion and serve to enhance and maintain the geologic stability of the site, provided that minimal surface irrigation is required. Therefore, **Special Condition Two (2)** requires the applicant to submit landscaping plans, including irrigation plans, certified by the consulting geologists as in conformance with their recommendations for landscaping of the project site. **Special Condition Two (2)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission finds that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that the use of such vegetation results in potential adverse

effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native, invasive species and therefore aid in preventing erosion.

In addition, the use of invasive, non-indigenous plant species tends to supplant species that are native to the Malibu/Santa Monica Mountains area. Increasing urbanization in this area has caused the loss or degradation of major portions of the native habitat and loss of native plant seed banks through grading and removal of topsoil. Moreover, invasive groundcovers and fast growing trees that originate from other continents that have been used as landscaping in this area have invaded and seriously degraded native plant communities adjacent to development. Such changes have resulted in the loss of native plant species and the soil retention benefits they offer. Therefore, in order to ensure site stability and erosion control, **Special Condition Two (2)** requires the disturbed and graded areas of the site to be landscaped with appropriate native plant species, and the removal of native vegetation to be minimized consistent with fire safety standards.

The applicants have submitted a fuel modification plan that establishes three zones on the slopes below the proposed residence. Zone A, the setback zone, extends 20 feet from the proposed residence, garages, and guest house, and Zone B, the irrigated zone, extends 80 feet further from these structures, or in the areas of the proposed garages, to the property line. Zone C, the thinning zone, extends up to 100 feet further down the slope, although the plan allows for reduction of the width of Zone C based on geologic features, such as the sandstone outcrops that occur on the slope, and on the nature and density of fuels.

The submitted fuel modification plan thus includes the clearing and thinning of native chaparral vegetation and the introduction of irrigation on the steep slopes of the project site. The proposed irrigated fuel modification zones extend 100 feet down the hillside, and include areas of native vegetation on slopes ranging from near vertical (northeast and east of the proposed development) to 4:1 (south of the proposed development). Approximately half of the irrigated area would be on slopes with gradients less than 1.5:1. In addition, Fuel Modification Zone C, which would extend an additional 20 to 100 feet down the slope would result in the implementation of thinning requirements, including the removal of native species including chamise, buckwheat and several varieties of sage. In summary, the proposed project would result in significant clearing and irrigation of much of the steep slope below the project site.

In addition to fuel modification on the project site, the proposed project will establish a 200 foot brush clearance radius from all combustible structures. Existing brush clearance radii to the north overlap with the brush clearance radius established by the proposed project. However, the new brush clearance radius will extend onto the vacant parcel immediately west of the subject site, resulting in additional clearance on steep slopes containing chaparral vegetation.

Removal of native species and introduction of irrigation on the steep slopes and thin soils of the subject site increases the potential for erosion. Native vegetation tends to have a relatively low surface/foilage weight and deeper root structures than non-native species and therefore aids in preventing erosion. Conversely, maintenance of native chaparral habitat would serve to reduce erosion and enhance the geologic stability of the site. In order to reduce the potential for erosion on the site consistent with Section 30253 of the Coastal Act, it is necessary to minimize the removal of native chaparral vegetation on the site.

Therefore, **Special Condition Two (2)** requires that the applicants submit a final fuel modification plan that minimizes the removal of native vegetation to the maximum extent feasible, consistent with fire safety standards. In addition, **Special Condition Twelve (12)**

requires the applicants to submit revised plans that eliminate all structural development below elevation 2316, including the proposed guest house. Elimination of the proposed guest house will eliminate the additional area of fuel modification and brush clearance required to ensure its safety, thus reducing the removal of native vegetation and the introduction of irrigated vegetation.

In addition, to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction activities, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. In the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans, loss of natural vegetative cover may result in unnecessary erosion. **Special Condition Five (5)** specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced.

The proposed project involves 3,200 cu. yds. of cut and 200 cu. yds. of fill, as well as excavation for foundations, producing excess graded material. The Commission finds that stockpiling excavated material may contribute to increased erosion at the site. The Commission also notes that landform alteration would result if the excavated material were to be collected and retained on site. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, **Special Condition Six (6)** requires the applicant to remove all excess graded material from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit.

Finally, in order to ensure that any future site development is reviewed for its potential to create or contribute to erosion, the Commission finds it necessary to impose **Special Condition Nine (9)**, which requires the applicants to obtain a coastal development permit for any future development on the site, including improvements that might otherwise be exempt from permit requirements. In addition, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Wild Fire

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicants assume the liability from these associated risks. Through **Special Condition Four (4)**, the wildfire waiver of liability, the applicants acknowledge the nature of the fire hazard

which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of **Special Condition Four (4)**, the applicants also agree to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

In summary, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

D. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

Section **30231** of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

As noted above, the applicant's proposal includes construction of a new single-family residence, two detached garages, guest house, swimming pool, patio, stairs, retaining walls, driveway, turnaround, and septic system. The site is considered a "hillside" development, as it involves steeply to moderately sloping terrain with soils that are susceptible to erosion. The project site overlooks Carbon Creek, located approximately 1,000 feet west of the site.

The proposed development will result in an increase in impervious surface at the subject site, which in turn decreases the infiltrative function and capacity of existing permeable land on site. Reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These

impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Three (3)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Two (2)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Removal of native habitat on steep, erosion-prone slopes contributes to sedimentation of downslope surface waters. Therefore, **Special Condition Two (2)** also requires the applicants to submit a fuel modification plan that minimizes the removal of native habitat on the project site, in order to help prevent erosion of the steep slopes.

Finally, the proposed development includes the installation of an on-site private sewage disposal system to serve the residence. The County of Los Angeles, Department of Health Services, has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

E. Environmentally Sensitive Habitat

Section **30240** of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section **30107.5** of the Coastal Act, defines an environmentally sensitive area as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination, one must focus on three main questions:

- 1) Is a habitat or species rare?
- 2) Is the habitat or species especially valuable because of its special nature or role in the ecosystem?
- 3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 19**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP².

For any specific property within the Santa Monica Mountains, it is necessary to meet three tests in order to assign the ESHA designation. First, is the habitat properly identified, for example as

² Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

coastal sage scrub or chaparral? Second, is the habitat undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

Commission staff visited the subject properties on July 26, 2002 and May 15, 2003 and confirmed that the slopes descending from the building site consist primarily of chaparral vegetation. In addition, this chaparral vegetation is undisturbed and is part of a large contiguous area of chaparral habitat that extends into undeveloped Carbon Canyon southeast of the subject site (Exhibit 22). The designation of habitat types follows Holland (1986) and the list given in the NPS General Management Plan & Environmental Impact Statement for the Malibu/SMM area. Therefore, due to the important ecosystem roles of coastal sage scrub and chaparral in the Santa Monica Mountains (detailed in **Exhibit 19**), and the fact that the subject site is relatively undisturbed and part of a large, unfragmented block of habitat (**Exhibit 16**), the Commission finds that the chaparral habitat on the site meets the definition of ESHA under the Coastal Act.

As previously mentioned, the project site is located on a partially developed ridgeline overlooking Carbon Canyon in the Santa Monica Mountains. The building site is located on a disturbed portion of the subject property that has been cleared for many years for fire protection purposes for the adjacent residential developments. The actual building site is not considered ESHA. However, the area downslope of the building site contains undisturbed chaparral habitat that is contiguous with a vast area of undisturbed habitat that extends into Carbon Canyon and beyond. As discussed above, this chaparral habitat meets the definition of ESHA as defined in the Coastal Act. The fuel modification and brush clearance zones extending around the proposed development will require the removal and thinning of chaparral ESHA.

As explained above, the slopes on the project site constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel which will require the removal of chaparral ESHA as a result of fuel modification and brush clearance for fire protection purposes. As single family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a

taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicant purchased the property in November 2000 for \$375,000. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use. Residential development has previously been approved by the Commission on other parcels in the near vicinity that generally contained the same type of habitat as the applicant's parcel. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on this fact, along with the presence of existing and approved residential development on nearby parcels, the applicant had reason to believe that they had purchased a parcel on which they would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. The parcel is 6.92 acres, and is surrounded by other residentially zoned parcels, several of which have been developed. Public parkland has been acquired in the general vicinity, the Santa Monica Mountains National Recreation Area. However, there is currently not an offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the property would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the subject property would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with

Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

As noted above, the applicants propose to construct three level pad areas for the turnaround and garage area, the main residence, and a lower level containing a swimming pool/patio and guesthouse. The upper pad areas (less the area for the turnaround) total approximately 7,400 sq. ft. of building area. The lower pool level is approximately 3,000 sq. ft. in area. The proposed building pad areas are located outside of ESHA, but require fuel modification that extends into ESHA.

Commission staff has considered whether alternative proposals for residential development on the subject parcel exist that would minimize adverse impacts to ESHA. The proposed residence is located adjacent to an existing access road, and utilizes the relatively gentle topography of the ridge crest and the slightly less steep gradient of the upper slope. The proposed building site is also closer to existing development and thus the required brush clearance will partly overlap with established radii for existing development. Location of a residence elsewhere on the property would require construction of a longer driveway on the steep slopes, and would involve additional amounts of grading, as well as additional removal of native vegetation on the steep slopes. There is no alternative location for the residence on the parcel that could reduce adverse impacts to ESHA.

However, revisions to the proposed development can be made that would reduce impacts to ESHA. As noted above, the proposed project includes the construction of a swimming pool/patio area and 750 sq. ft. guesthouse in front of and below the proposed main residence. The proposed guesthouse extends the fuel modification and brush clearance radii for the proposed development approximately 60 feet down the slopes to the southeast and southwest. Therefore, in order to minimize impacts to ESHA on and off the project site, **Special Condition Twelve (12)** requires the applicants to submit revised plans that eliminate all structural development below elevation 2316, including the proposed guest house. Elimination of the proposed guest house will eliminate the additional area of fuel modification and brush clearance required to ensure its safety, thus reducing the removal of native vegetation in ESHA and the introduction of irrigated vegetation. Eliminating the lower pad area will reduce the building area to approximately 7,400 sq. ft.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.

Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.

Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels. In this case, required fuel modification will extend from the approved structures as generally shown on **Exhibits 14 and 15**, into chaparral ESHA both on and off site.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla,

black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)³. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral⁴.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area⁵. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat⁶. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments⁷. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms⁸. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats⁹.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole

³ Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125-136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

⁴ Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

⁵ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

⁶ Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

⁷ Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

⁸ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

⁹ Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

ecosystem.¹⁰ In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds¹¹.

While these impacts resulting from fuel modification can be reduced through siting and designing alternatives for new development, they cannot be completely avoided, given the high fire risk and the location of ESHA on the subject site. The Commission finds that the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification and brush clearance. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA both on and offsite that will be impacted by the proposed development, including the areas affected by fuel modification and brushing activities, as required by **Special Condition Thirteen (13)**.

In the certification of the Malibu LCP the Commission approved three methods for providing mitigation for the unavoidable loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on the subject site. These three mitigation methods are provided as three available options for compliance with **Special Condition Thirteen (13)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in Special Condition Thirteen (13), subpart A.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in Special Condition Thirteen (13), subpart B.

The third habitat impact mitigation option is an in-lieu fee for habitat conservation. The fee will be based on the habitat type(s) in question, the cost per acre to restore or create the comparable habitat type, and the acreage of habitat affected by the project. The fee shall be provided to the Santa Monica Mountains Conservancy for the acquisition or permanent

¹⁰ Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

¹¹ Hughes, L. and M. Westoby. 1992. *Capitula* on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in Special Condition Thirteen (13), subpart C.

The Commission has determined that in conjunction with siting new development to minimize impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA. The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Two (2)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. In addition, **Special Condition Two (2)** requires that the applicants submit a final fuel modification plan that minimizes the removal of native vegetation to the maximum extent feasible, consistent with fire safety standards.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Seven (7)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the proposed setback from the sensitive habitat area and natural topography in concert with the lighting restrictions will attenuate the impacts of unnatural light sources and will not impact sensitive wildlife species.

Furthermore, fencing of the property would adversely impact the movement of wildlife through the chaparral ESHA on this 6.92 acre parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of Zone B (irrigated zone) of the fuel modification plan as required in **Special Condition Two (2)**.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Nine (9)**, the future development restriction, has been required. Finally, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act.

F. Local Coastal Program

Section 30604 of the Coastal Act states:

- A) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicants. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

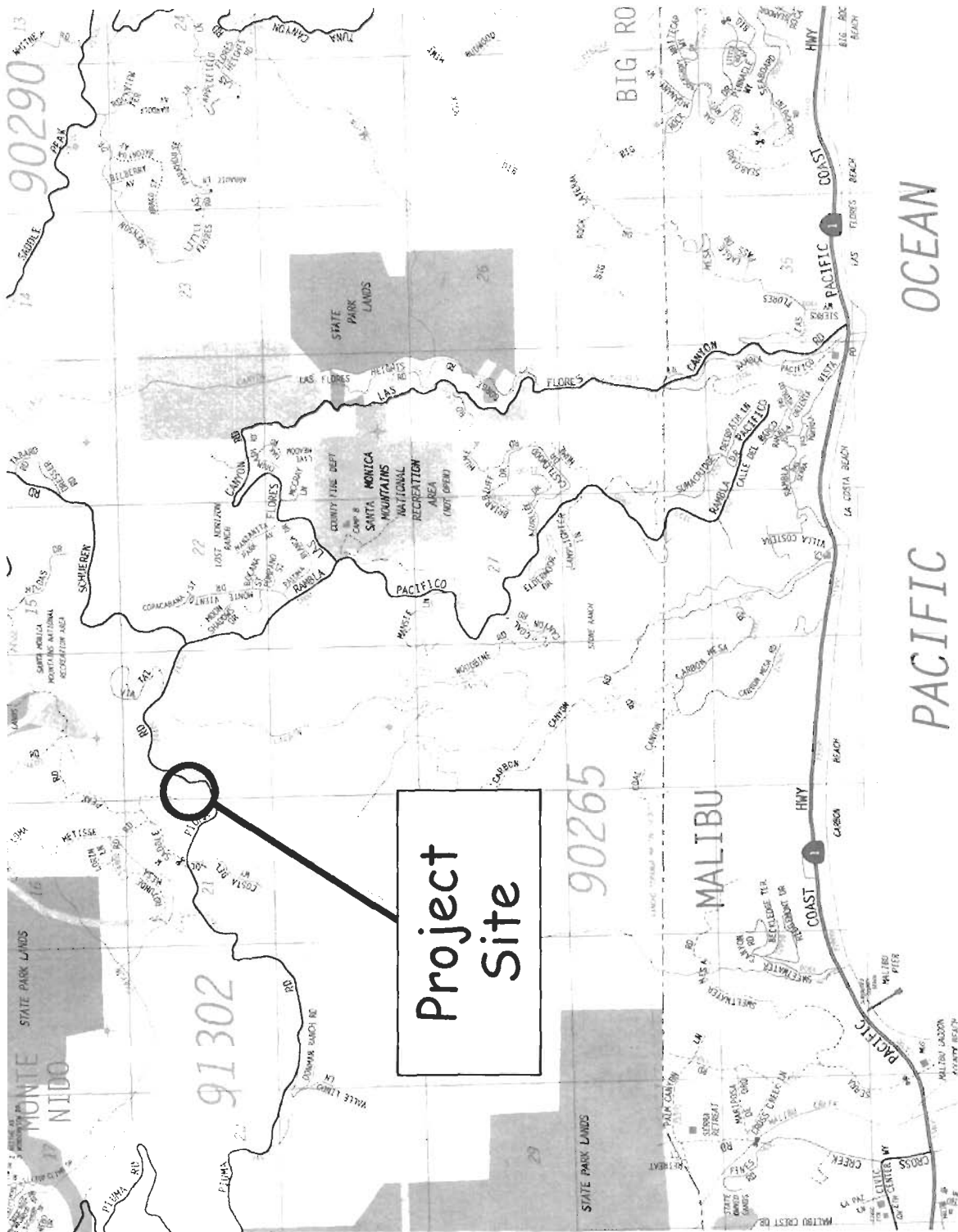


EXHIBIT NO. 1
APPLICATION NO.

4-03-017
VICINITY MAP

ENLARGED SITE PLAN

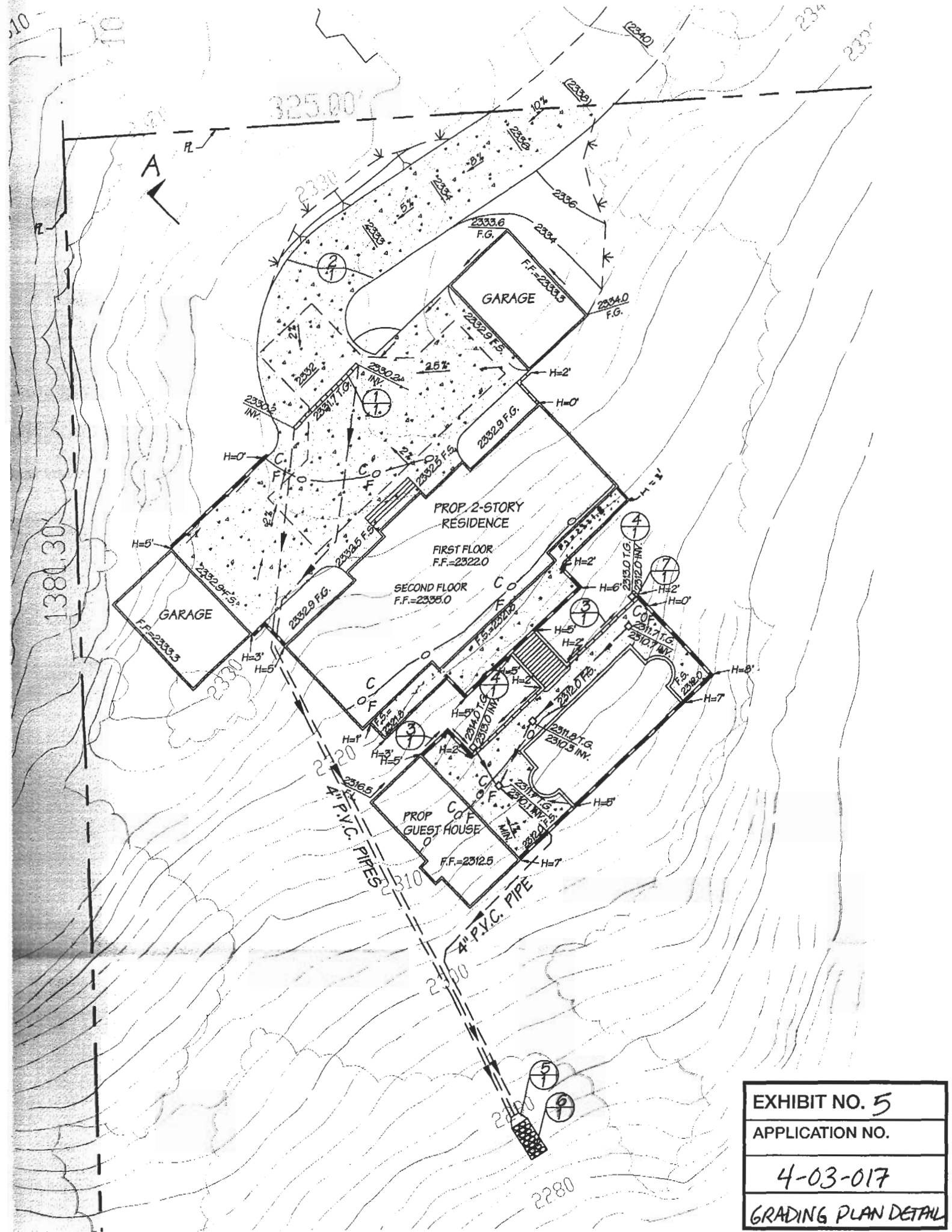
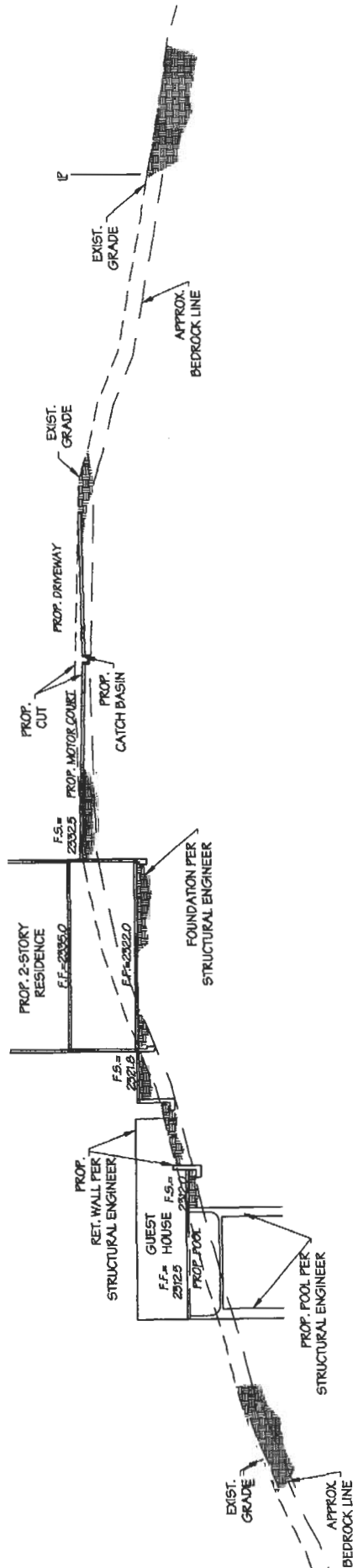


EXHIBIT NO. 5
APPLICATION NO.
4-03-017
GRADING PLAN DETAIL

ITE PLAN

SCALE: 1"=40'



SECTION "A-A"

SCALE: 1"=20'

EXHIBIT NO. 6

APPLICATION NO.

4-03-017

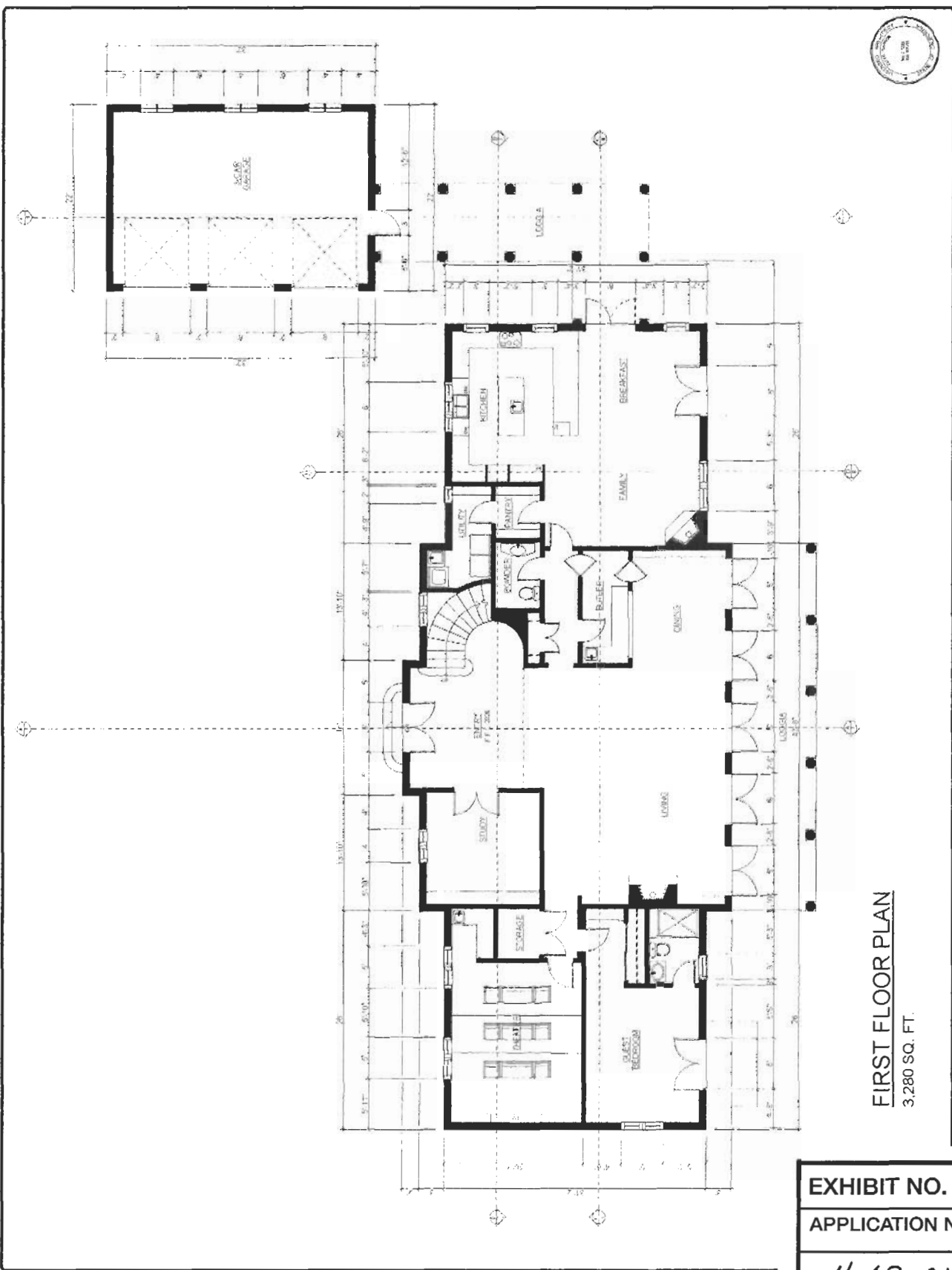
GRADING PLAN SECTION

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PROPOSED SINGLE FAMILY RESIDENCE
GUESTHOUSE AND GARAGE STRUCTURES FOR
JOHN AND ANN MATISE
SADDLE PEAK ROAD
MALIBU, CA 90265

CLIVE DAWSON A.T.A.
architecture and planning
28925 Pacific Coast Highway, Malibu, California 90265 310.588.1921

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DATE
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FIRST FLOOR PLAN
3,280 SQ. FT.

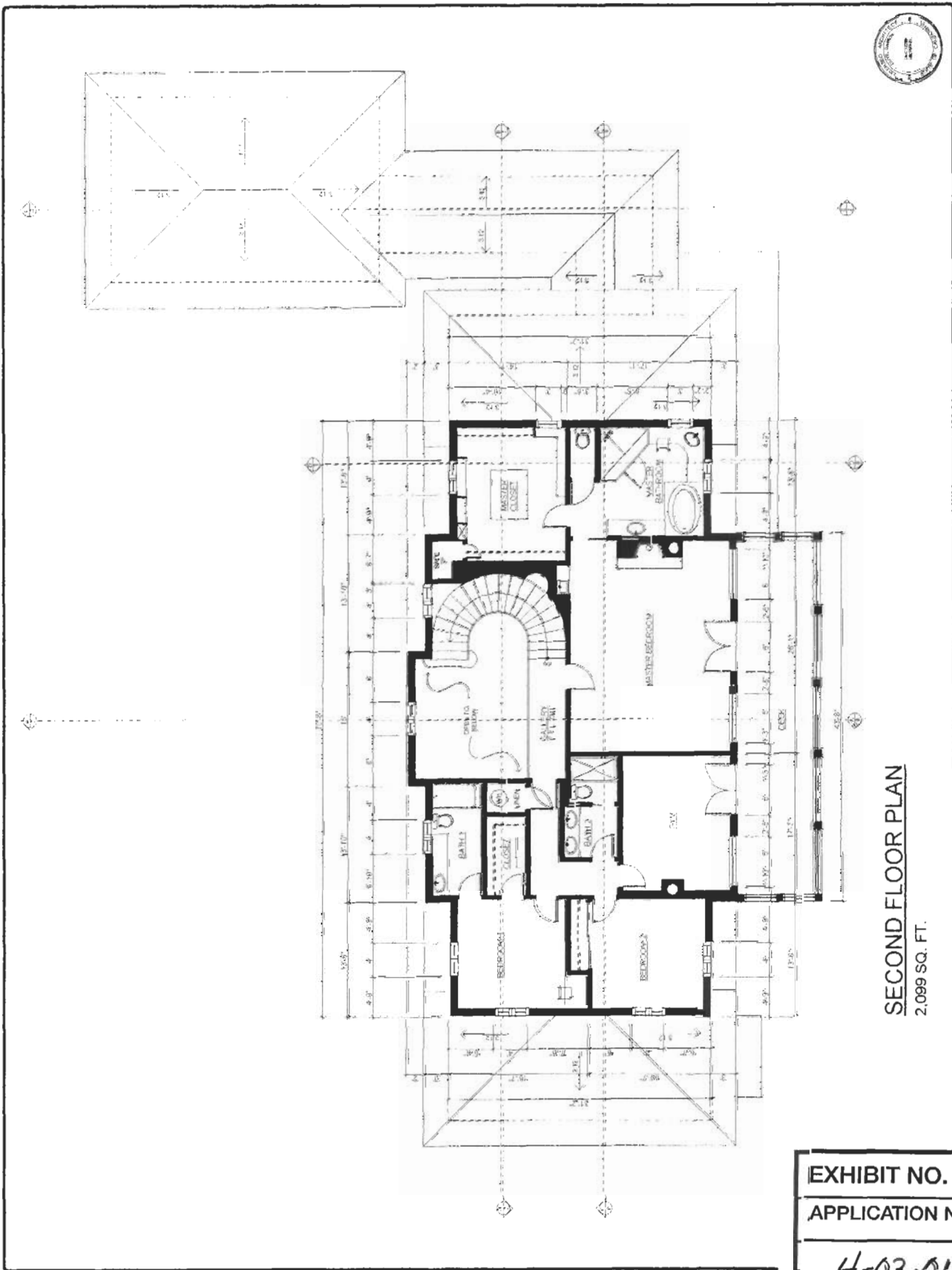
EXHIBIT NO. 7
APPLICATION NO.
4-03-017
FIRST FLOOR PLAN

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PROPOSED SINGLE FAMILY RESIDENCE
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CLIVE DAWSON A.I.A.
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SECOND FLOOR PLAN
 2,099 SQ. FT.

EXHIBIT NO. 8
APPLICATION NO.
4-03-017
SECOND FLOOR PLAN

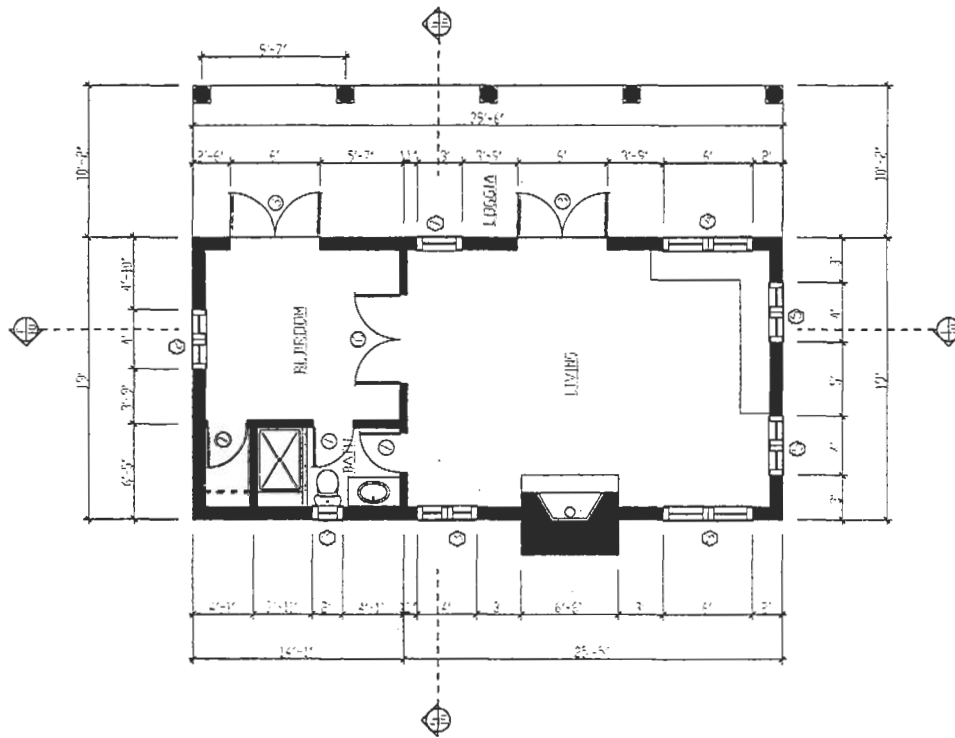
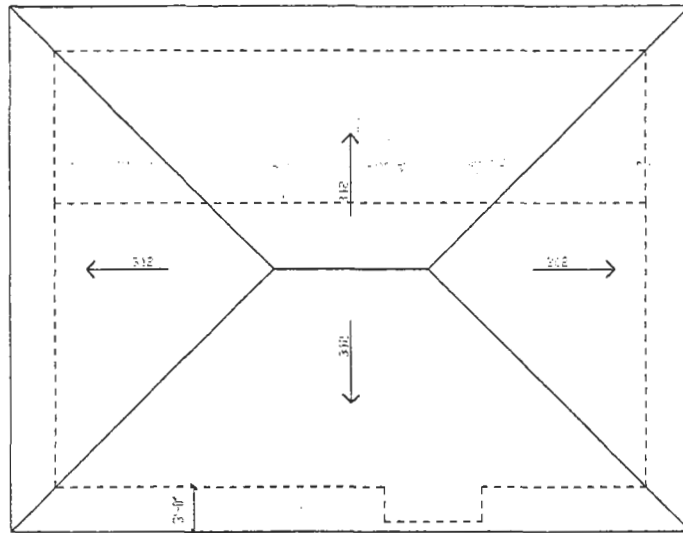


EXHIBIT NO. 9

APPLICATION NO.

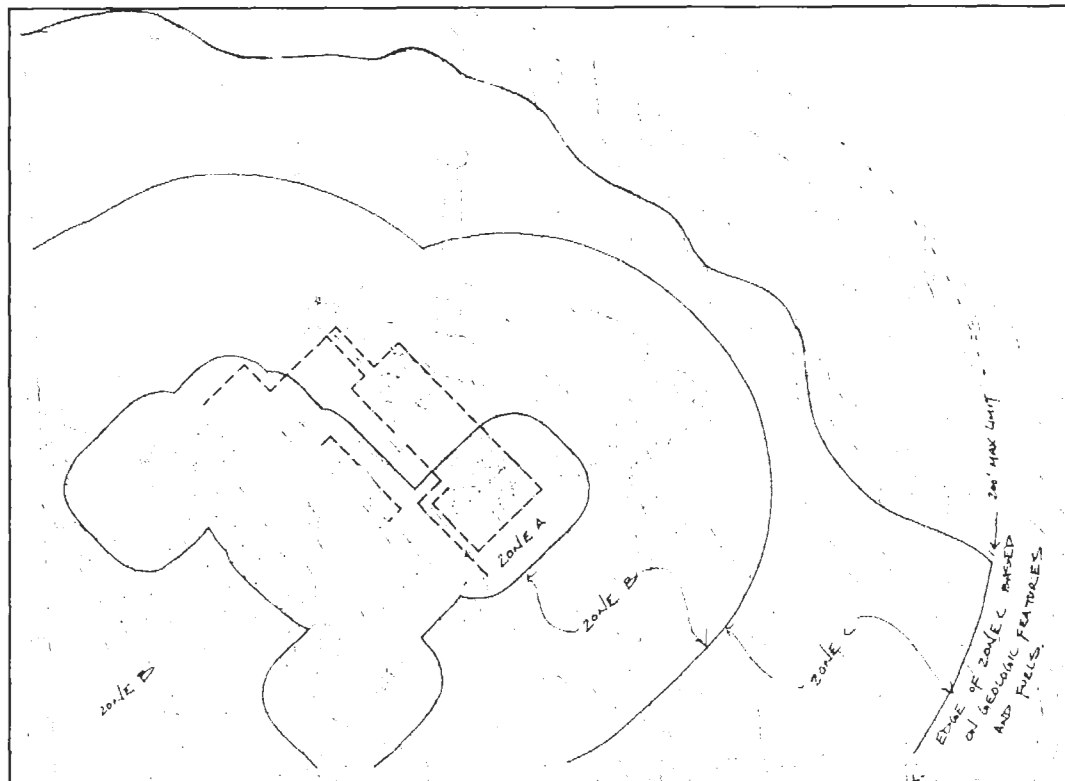
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GUESTHOUSE PLAN

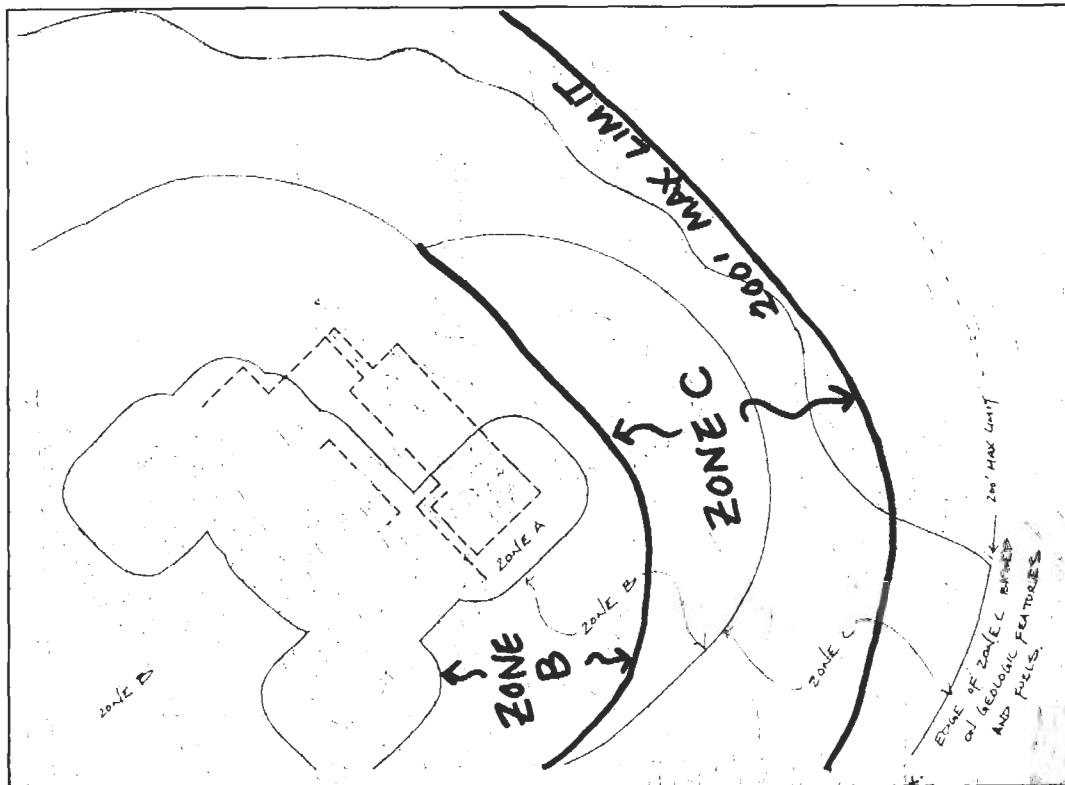
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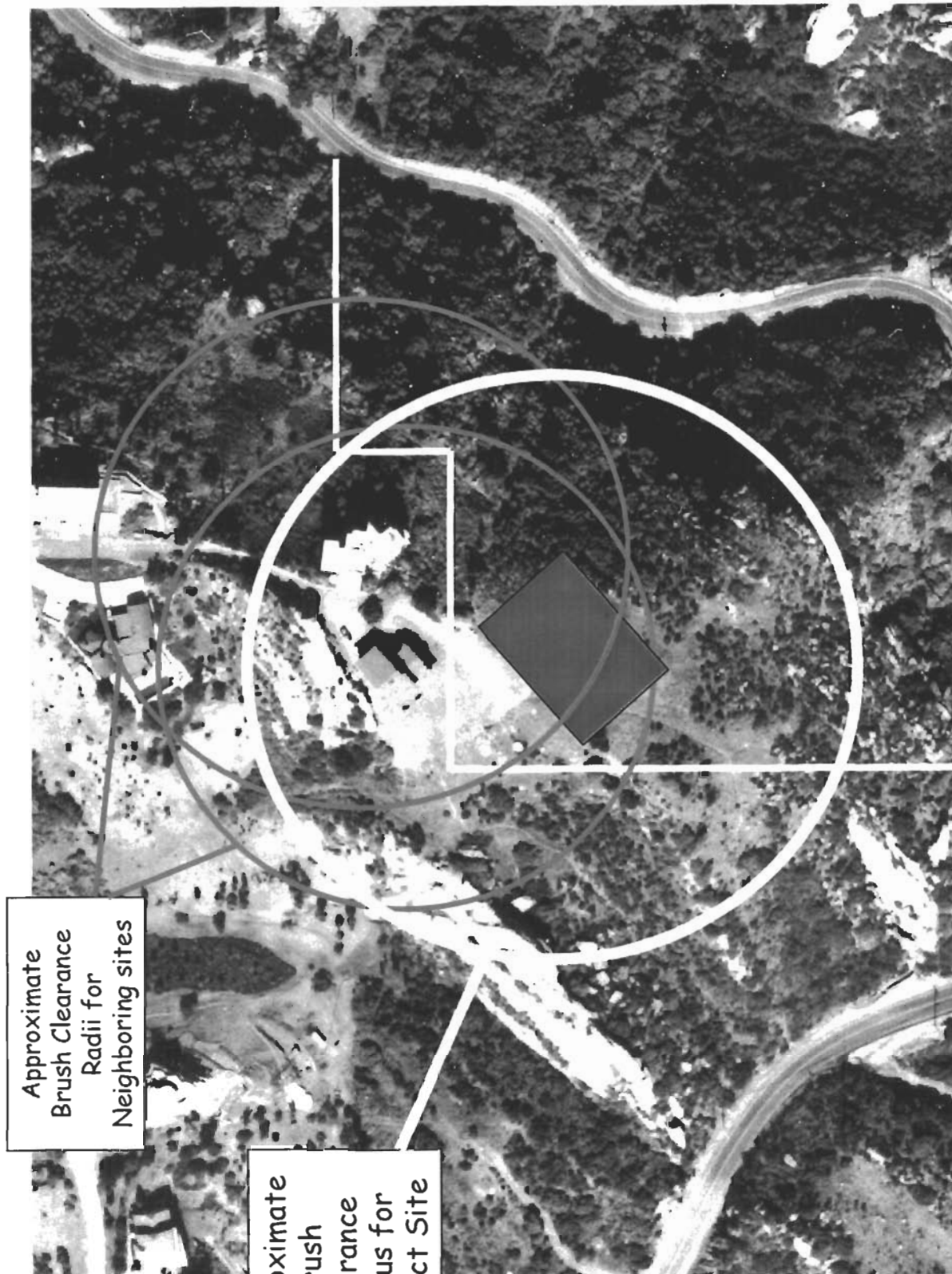


Proposed Fuel Modification



Fuel Modification with Deletion of Guesthouse

EXHIBIT NO. 14
APPLICATION NO.
4-03-017
FUEL MODIFICATION



Approximate
Brush Clearance
Radii for
Neighboring sites

Approximate
Brush
Clearance
Radius for
Project Site

Approximate brush clearance radii for proposed development and surrounding residences.

EXHIBIT NO. 15
APPLICATION NO.
4-03-017
BRUSH CLEARANCE

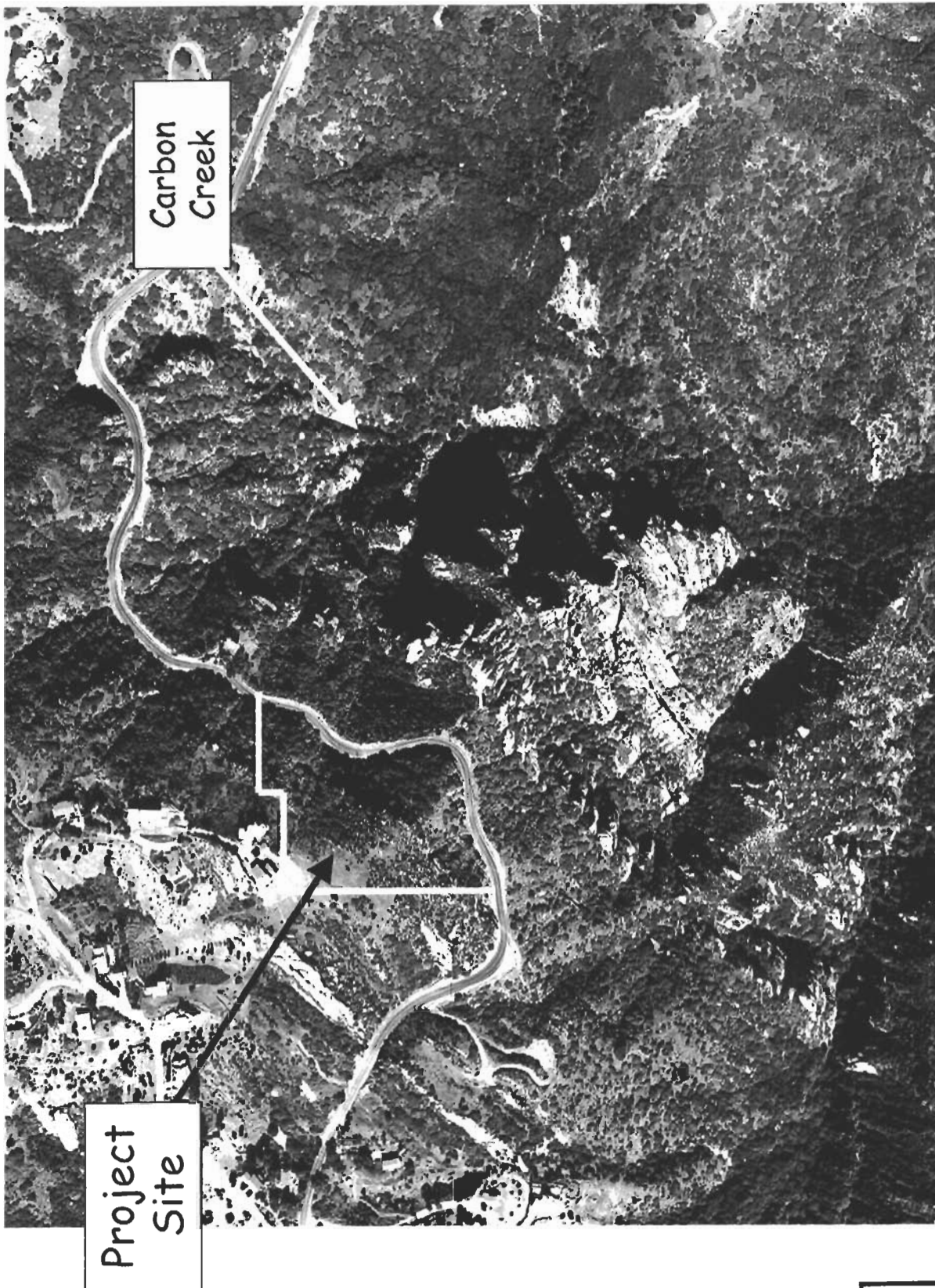


EXHIBIT NO. 16

APPLICATION NO.

4-03-017

AERIAL VIEW

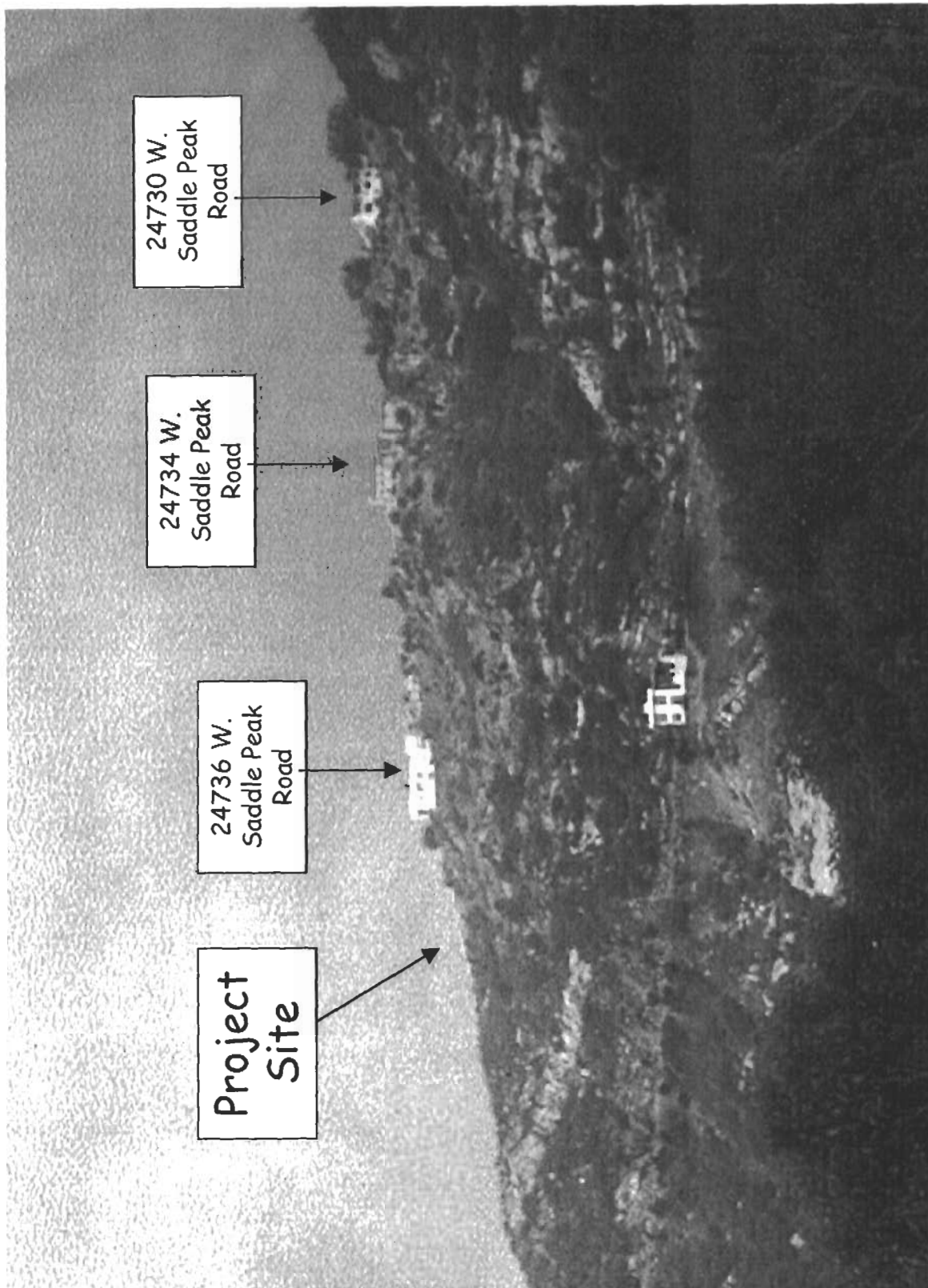


EXHIBIT NO. 17

APPLICATION NO.

4-03-017

RIDGE TOP DEVELOPMENT

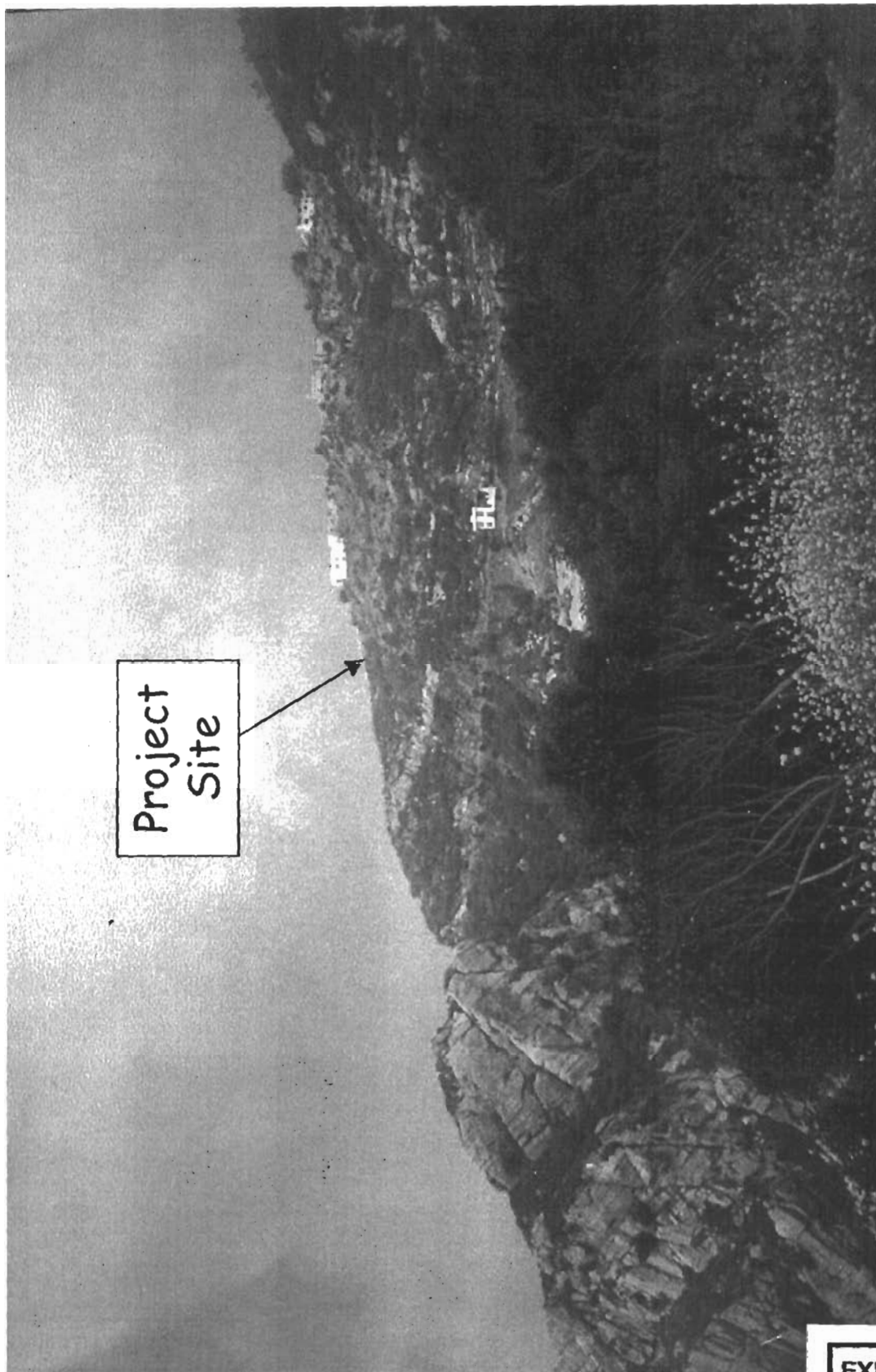


Photo 1: Project site from scenic viewpoint on Rambla Pacifico. View is to the west.

EXHIBIT NO. 18

APPLICATION NO.

4-03-017

PHOTOS (2pp)

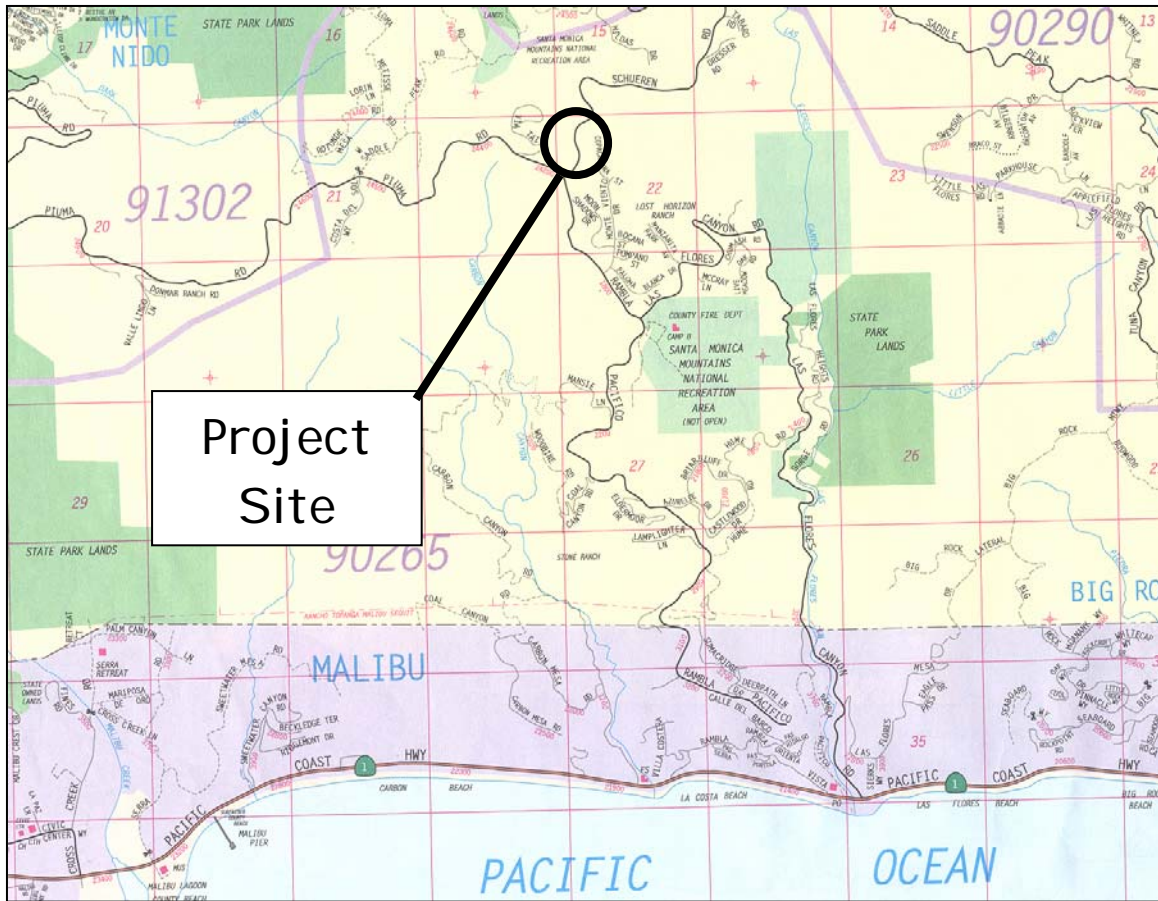


Exhibit 2
CDP No. 4-03-017-A1
Vicinity Map

AGA Design Group ARCHITECTS LANDSCAPE ARCHITECTS 21014 Sepulveda Blvd. Suite 100, Torrance, CA 90503 (310) 209-1234 FAX: (310) 209-1235	CLIENT: JOHN & ANN MATTHEWS	PROJECT: NEW RESIDENCE 21014 Sepulveda Blvd.	SHEET: TITLE SITE PLAN	PERIOD: 1992 PREPARED DATE: 1992 DRAWING NO.: 100-000000-01 REVISIONS: 1. 10/92 2. 11/92 3. 12/92 4. 01/93 5. 02/93 6. 03/93 7. 04/93 8. 05/93 9. 06/93 10. 07/93 11. 08/93 12. 09/93 13. 10/93 14. 11/93 15. 12/93 16. 01/94 17. 02/94 18. 03/94 19. 04/94 20. 05/94 21. 06/94 22. 07/94 23. 08/94 24. 09/94 25. 10/94 26. 11/94 27. 12/94 28. 01/95 29. 02/95 30. 03/95 31. 04/95 32. 05/95 33. 06/95 34. 07/95 35. 08/95 36. 09/95 37. 10/95 38. 11/95 39. 12/95 40. 01/96 41. 02/96 42. 03/96 43. 04/96 44. 05/96 45. 06/96 46. 07/96 47. 08/96 48. 09/96 49. 10/96 50. 11/96 51. 12/96 52. 01/97 53. 02/97 54. 03/97 55. 04/97 56. 05/97 57. 06/97 58. 07/97 59. 08/97 60. 09/97 61. 10/97 62. 11/97 63. 12/97 64. 01/98 65. 02/98 66. 03/98 67. 04/98 68. 05/98 69. 06/98 70. 07/98 71. 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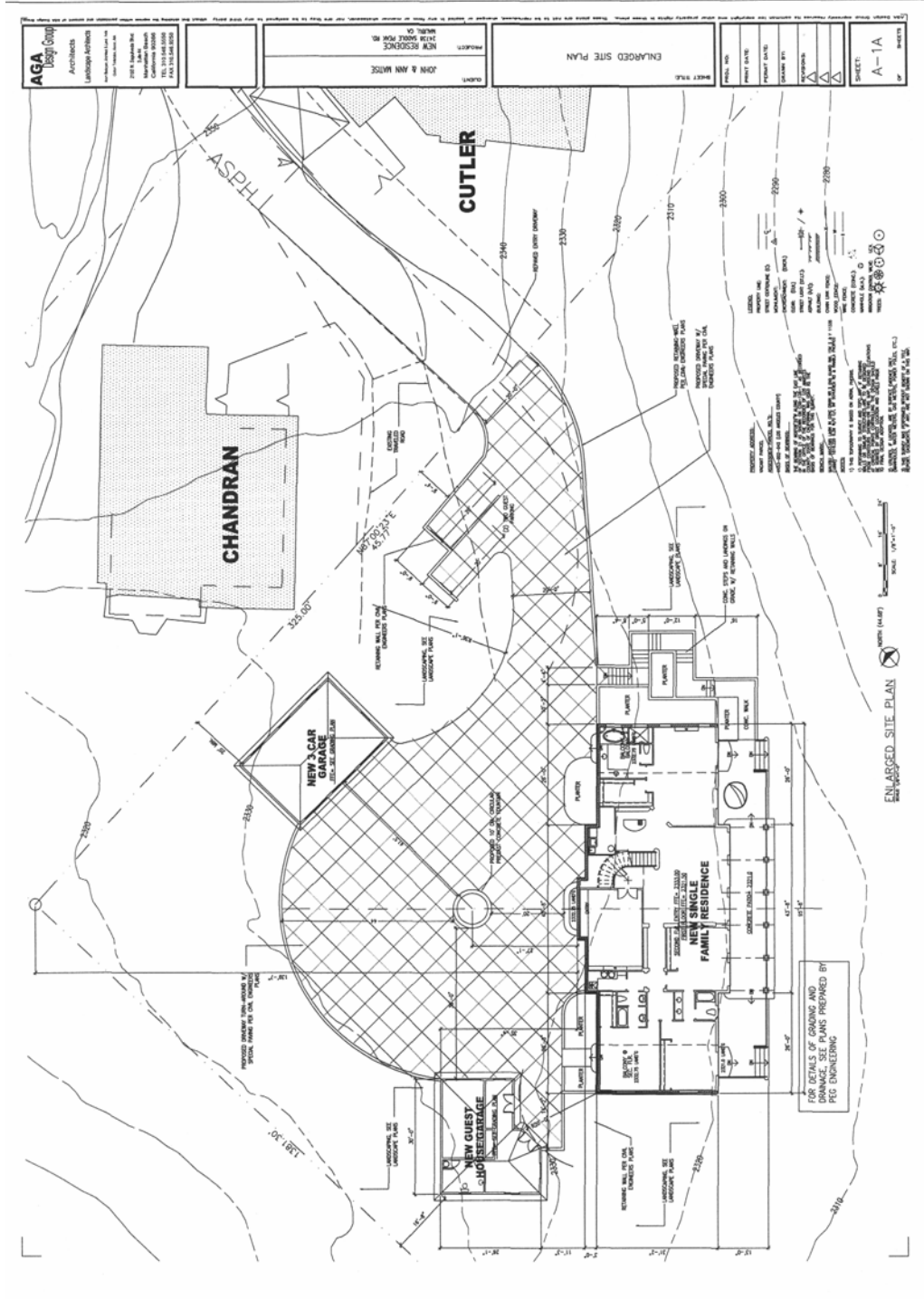
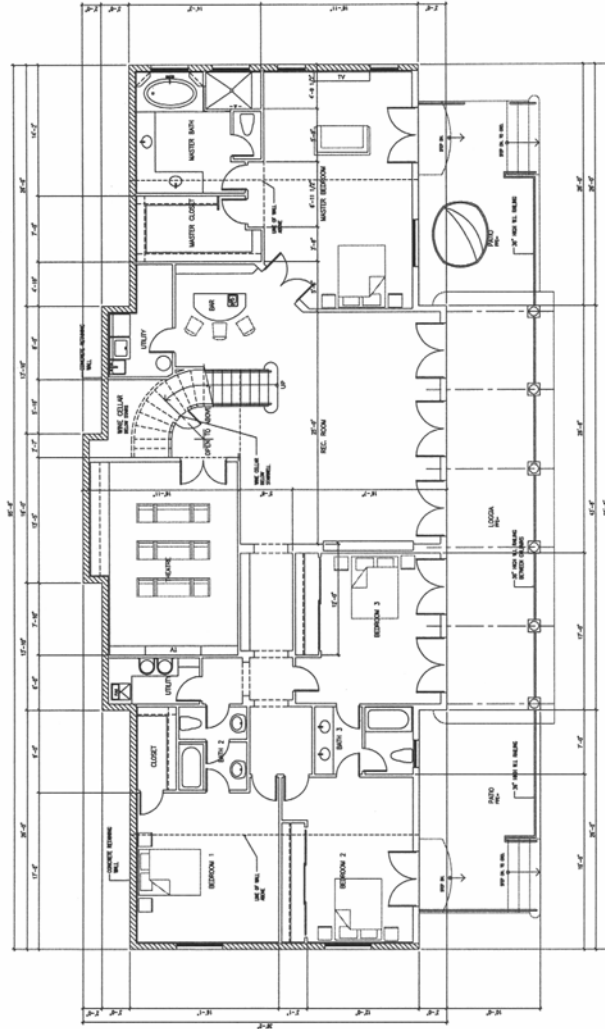


Exhibit 4
CDP No. 4-03-017-A1
Enlarged Site Plan

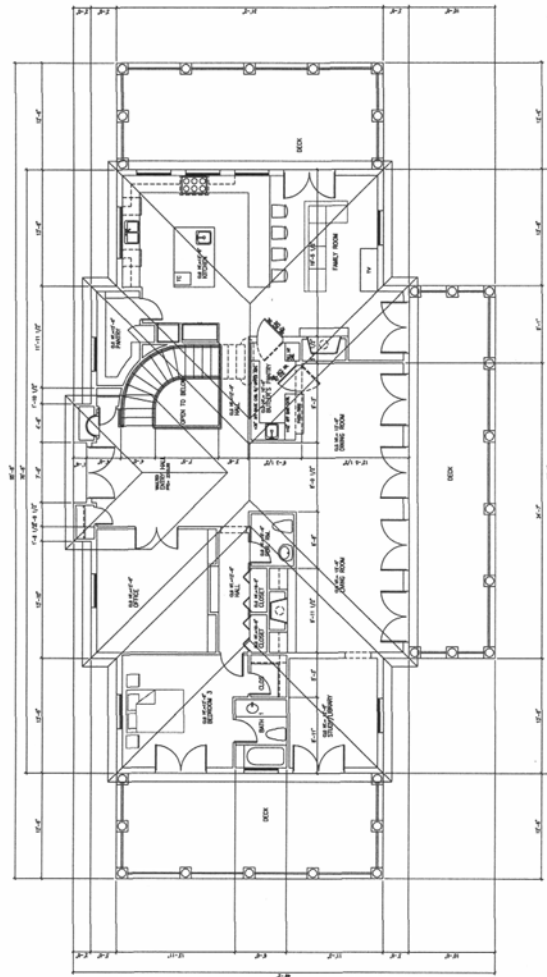
AGA Design Group Architects Landscape Architects 7000 E. Main Street Suite 100 Aurora, CO 80017 Tel: 303.544.1000 Fax: 303.544.1005		CLIENT: JOHN & ANN WATSE PROJECT: NEW SINGLE FAMILY RESIDENCE 2120 BOWEN ROAD NE KENNESAW, GA 30144		SHEET TITLE: FIRST FLOOR PLAN SHEET NO.: PRINT DATE: PRINT DATE: DRAWN BY: CHECKED BY: APPROVED BY:		SHEET: A-2 OF: 2
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FIRST FLOOR PLAN

Exhibit 5
CDP No. 4-03-017-A1
First Floor Plan

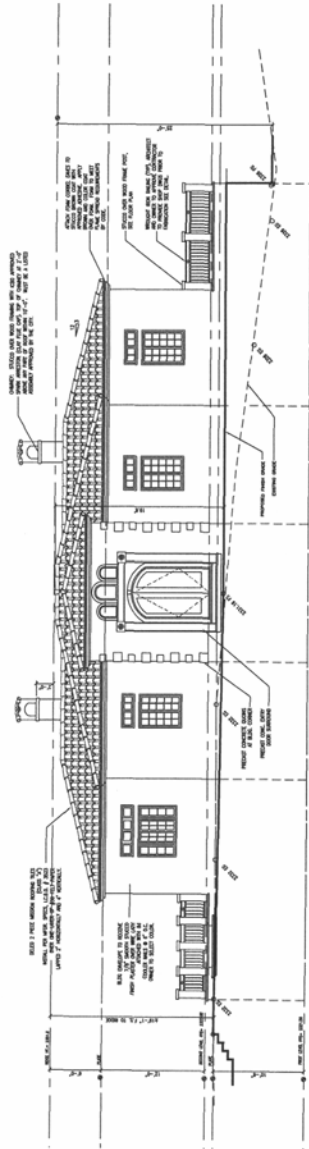
AGA Design Group Architects Landscape Architects 2100 S. Sepulveda Blvd. Suite 100 Encino, CA 91436 Tel: 818.709.1000 Fax: 818.709.1001		CLIENT: JOHN & ANN WATZ		PROJECT: NEW SINGLE FAMILY RESIDENCE 12125 LINDEN BLVD. VANUCCIO, CA 91411		SHEET TITLE: SECOND (ENTRY LEVEL) FLOOR PLAN		SHEET NO.: A-3	
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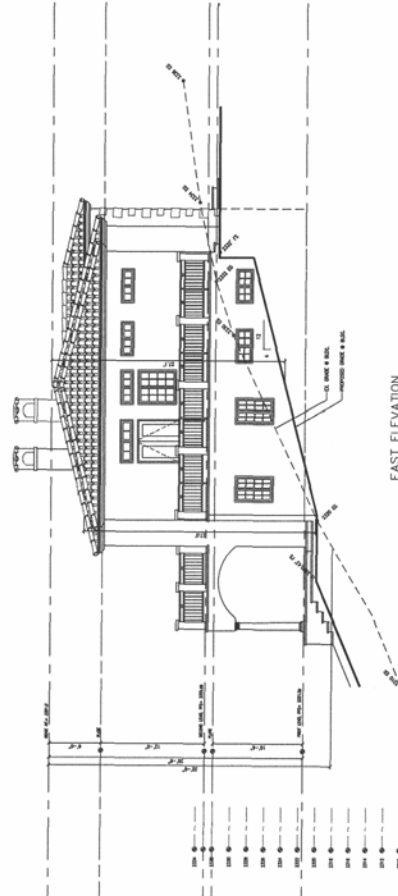
SECOND (ENTRY LEVEL) FLOOR PLAN

Exhibit 6
CDP No. 4-03-017-A1
Second Floor Plan

AGA Design Group ARCHITECTS LANDSCAPE ARCHITECTS 10000 Wilshire Blvd, Suite 1000 Los Angeles, CA 90024 TEL: 310-554-5500 FAX: 310-554-5501		CLIENT: JOHN & ANN WATSE PROJECT: NEW SCHOOL FAMILY RESIDENCE 12121 NEW SCHOOL ROAD, WEST LA, CA 90024		SHEET NO. 12 PROJECT NAME: RESIDENCE ELEVATIONS PROJECT DATE: 12/12/11 DRAWING NO.: 12121-01		SHEET: A-5 OF 5	
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NORTH (FRONT) ELEVATION



EAST ELEVATION

Exhibit 7
CDP No. 4-03-017-A1
Elevations (2 pages)

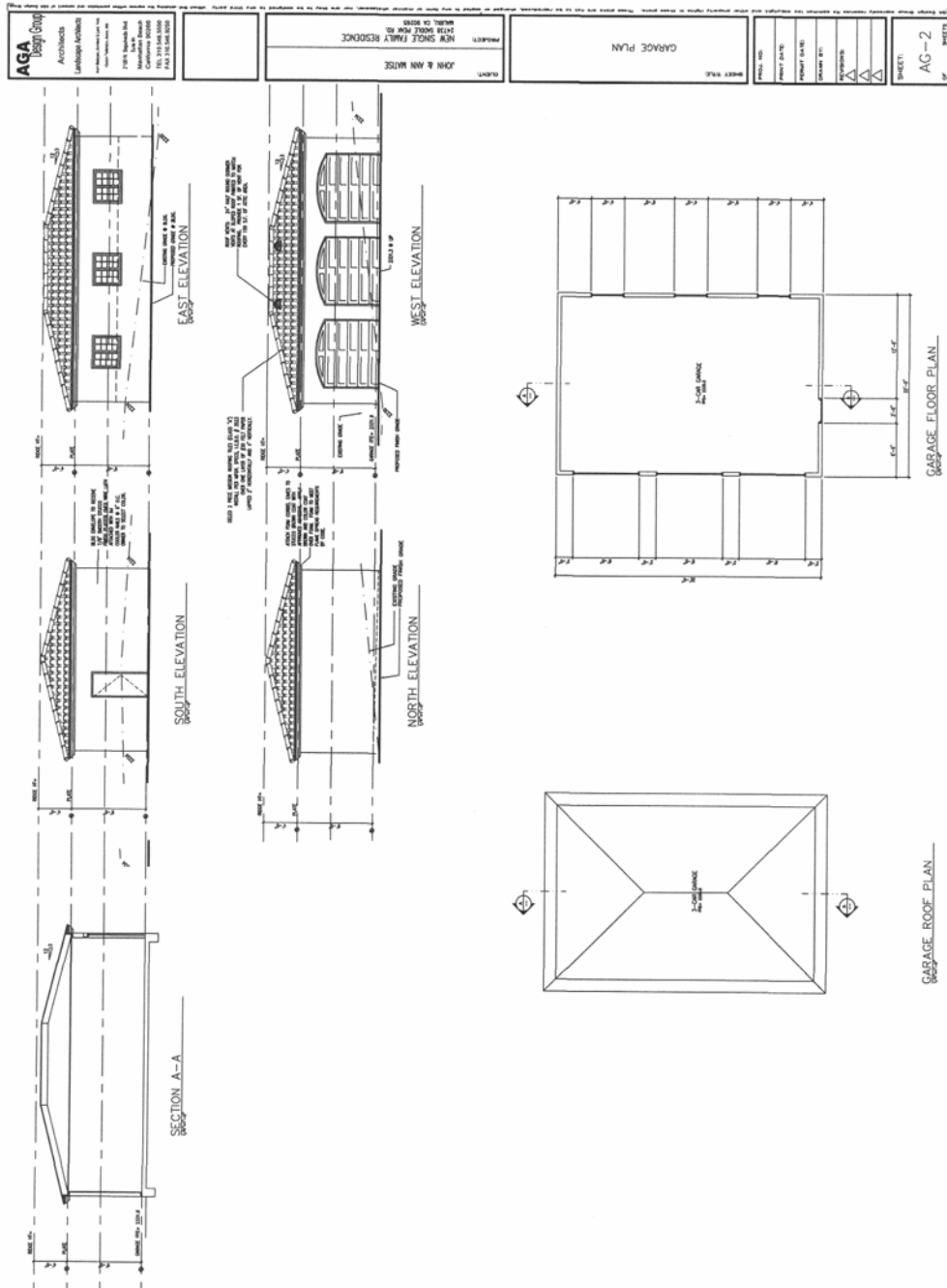


Exhibit 9
CDP No. 4-03-017-A1
Garage Plan

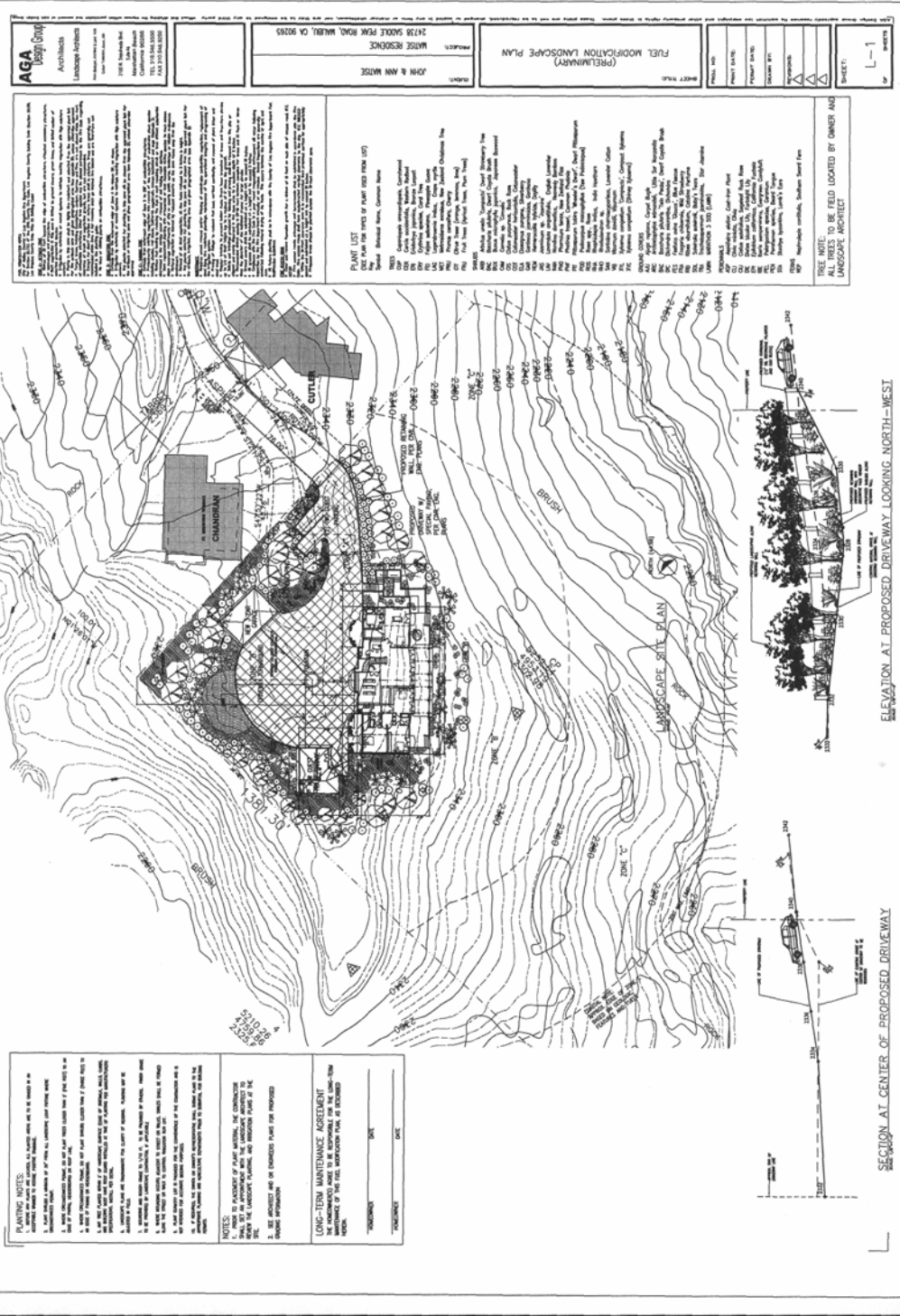


Exhibit 10
CDP No. 4-03-017-A1
Landscape Plan

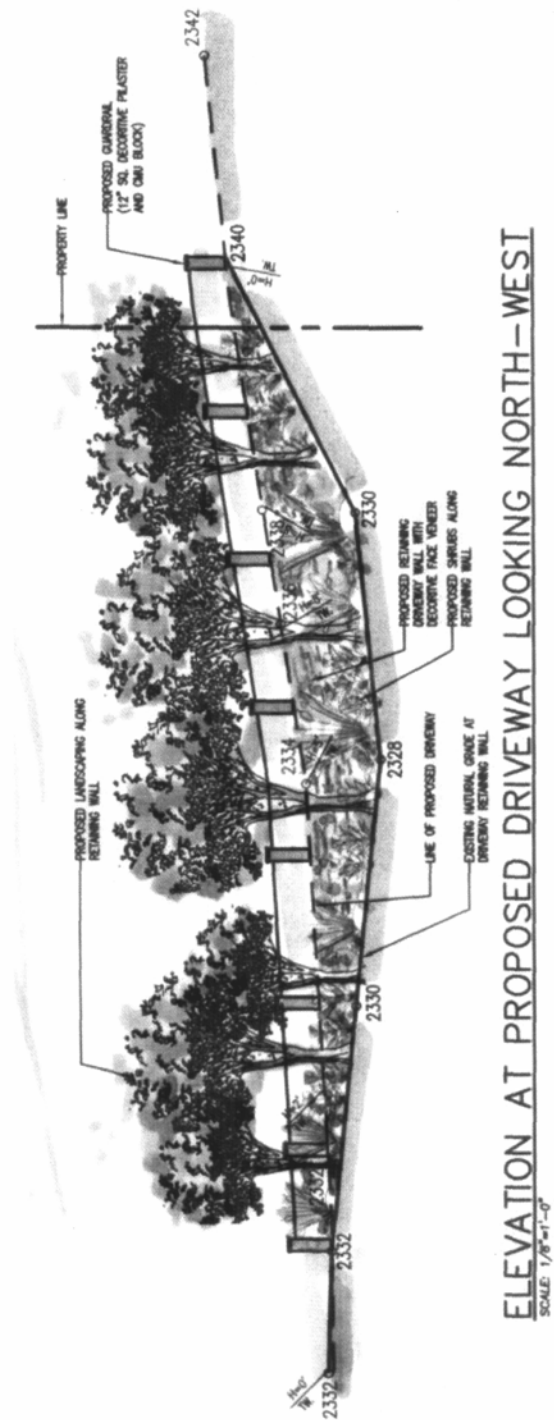


Exhibit 11
CDP No. 4-03-017-A1
Proposed Landscape
Screening

EASEMENT EXHIBIT FOR JOHN MATISE

IN REVIEWING NUMEROUS DEED DOCUMENTS CONCERNING THE 30' WIDE INGRESS/EGRESS EASEMENT, IT SHOULD BE NOTED THAT THERE IS AMBIGUITY AT THE SOUTHERLY END, AS SHOWN, DUE TO MULTIPLE CONFLICTING ESMT DEED CALLS. THESE CONFLICTING ESMT DEED CALLS ARE SHOWN IN D1, AND ARE REPEATED IN THE CURRENT DEEDS FOR MATISE, CHANDRAN, & CUTLER. THIS SURVEY HELD THE ESMT DEED CALLS (DEEMED THESE CALLS AS CONTROLLING FOR THE C/L OF THE ESMT) FOR CURVE DATA & TANGENT FROM THE CURVE, TO A LINE THAT IS PARALLEL TO THE NLY LINE OF SE 1/4 OF NE 1/4. THIS METHOD PLACES THE ERROR IN THE FINAL COURSE.

AN ALTERNATIVE LOCATION FOR THE EASEMENT COULD BE ACHIEVED BY HOLDING THE DISTANCE DEED CALLS FROM THE SW COR OF NE 1/4 OF NE 1/4, AND DISREGARDING THE LENGTH OF CURVE AND MOST SOUTHERLY COURSE BEARING/DISTANCE. THAT WOULD MAKE THE LOCATION OF THE ESMT COINCIDE WITH THE SHOWN PROPERTY LINE.

BY USING THE ABOVE ALTERNATIVE LOCATION WOULD ALSO NEGATE THE PROPERTY LINE DEED CALL IN D2, D3, D4, ALONG WITH OTHER PREVIOUS DEEDS, THENCE LEAVING SAID CENTERLINE...

ADDITIONALLY, THERE IS A SEPARATE "RIGHT OF WAY DEED", D6, WHICH WAS PREPARED IN REVERSE DIRECTION, STARTING FROM THE SLY END, WHICH WOULD BE SUBJECT TO A DIFFERENT INTERPRETATION OR INTENT, DUE TO THE DEED NOT CALLING FOR THE WLY LINE OF THE E 1/2 OF THE NE 1/4 OR A LINE PARALLEL TO THE NLY LINE OF SE 1/4 OF NE 1/4. THIS DEED HAS NOT BEEN PLOTTED OR ANALYZED AT PART OF THIS SURVEY.

REFERENCES:

- D1. BK.D2305 PG.895 INST#2126, Q.R. DEC 31, 1963
- D2. 03-2173108, Q.R. JUL 30, 2003
- D3. 84-1438096, Q.R. DEC 7, 1984
- D4. 96-581471, Q.R. APR 11, 1996
- D5. 00-1829923, Q.R. NOV 22, 2000
- D6. 77-1038069, Q.R.
- NS2. NON-RECORDED SURVEY BY C.W. COOK, 1980



APR 25 2006

BOUNDARY ESTABLISHMENT IS SHOWN ON A PENDING "RECORD OF SURVEY" IN THE OFFICE OF THE L.A. COUNTY SURVEYOR'S OFFICE.

D2,D3,D4 CALL FOR THE P/L TO LEAVE THE C/L OF THE ESMT AT THIS PT.

(D1,D2,D3,D4,D5)
C/L ESMT
R=100'
Δ=26°55'30"
L=46.99

HELD ESMT C/L
DATA & TANG
FROM CURVE
PER DEED
CALLS FOR
ESMT LOC.

SET 1'IP W/TAG
"LS7892"

(D2,D3,D4)
P/L
R=100'
Δ=28°40'16"
L=50.04
(C/M)
P/L
R=100'
Δ=28°40'39"
L=50.05

SET L/TAG
"LS7892"
IN CONC. CURB

CHANDRAN
03-2173108, Q.R.
C.C. 1108

CUTLER
96-581471, Q.R.
C.C. 03090

ESMT SIDELINE
ALTERNATIVE

ESMT SIDELINE
ALTERNATIVE

C/L ESMT

ESMT SIDELINE
HOLDING DEED
DATA & TANG
FROM CURVE

P/L

ESMT SIDELINE
HOLDING DEED
DATA & TANG
FROM CURVE

N87°02'17"E
187.47(M)

FD 2'IP W/TAG
"LS4582"
PER NS2
0.67' S12°47'54"E
OF COR.

EST'B 187.47' FROM WLY
LINE OF THE E. 1/2 OF
THE NE 1/4 OF SEC 21.
"NOTHING SET"

MATISE

00-1829923, Q.R.

C.C. 20996

HORIZON SURVEYS

Photogrammetry ~ Land Surveying

2920 West Magnolia Boulevard
Burbank, California 91505
Phone: (818) 558-5610
Fax: (818) 558-5109

Exhibit 12
CDP No. 4-03-017-A1
Legal Easement